

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
:
Gregory V. Serio, Superintendent of Insurance
of the State of New York, as Rehabilitator of
FRONTIER INSURANCE COMPANY, and as
Assignee of PLATINUM INDEMNITY, LTD.,
:

Plaintiff,
:

-against-
:

DWIGHT HALVORSON INSURANCE
SERVICES, INC d/b/a/ F.S.I.M. INSURANCE
SERVICES and FOOD SERVICE INSURANCE
MANAGERS, INC.,
:

Defendants.
:
-----X

04 CV 3361 (RMB)

**MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS'
MOTION TO DISMISS THE COMPLAINT AND TO COMPEL MEDIATION**

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	iii
PRELIMINARY STATEMENT.....	1
STATEMENT OF FACTS	3
A. The Parties	3
1. FIC	3
2. The Defendants	3
B. The FSIM Program	3
C. The Agency Agreement	4
D. FIC’s Termination of the FSIM Program.....	4
ARGUMENT	
POINT I.	
THE COURT’S EXERCISE OF PERSONAL	
JURISDICTION OVER THESE DEFENDANTS IS	
ENTIRELY APPROPRIATE UNDER THE CIRCUMSTANCES.....	
A. The Defendants Have Waived Any	
Objections to Personal Jurisdiction.....	5
B. DHIS Has Consented to	
the Jurisdiction of this Court.....	7
C. The Defendants’ “Transaction of Business” in New	
York Provides the Basis for Personal Jurisdiction.....	8
1. New York’s Long-Arm Statute.....	8
2. The “Transacting Business” Requirement	9
3. The “Arising Out of” Requirement.....	12
4. The Defendants’ Fall Within Reach	
of New York’s Long-Arm Statute.....	12

POINT II.

NEW YORK IS A PROPER
VENUE FOR THIS DISPUTE16

A. The Forum Selection Clause Expressly Provides
For Disputes to Be Venued in New York16

B. This District Is a Proper Venue Because a Substantial
Part of the Underlying Events Occurred in New York16

POINT III.

THE MEDIATION CLAUSE IS PERMISSIVE
RATHER THAN MANDATORY AND PROVIDES
NO BASIS FOR A STAY OF THIS ACTION.....20

CONCLUSION.....24

TABLE OF AUTHORITIES

Cases

<u>Abert Trading, Inc. v. Kipling Belgium N.V./S.A.</u> , 2001 U.S. Dist. LEXIS 3109 (S.D.N.Y. Feb. 26, 2002).....	8, 9, 10, 11
<u>Arrowsmith v. United Press International</u> , 320 F.2d 219, 223 (2d Cir. 1963).....	9
<u>Astor Holdings, Inc. v Roski</u> , 2002 U.S. Dist. LEXIS 758 (S.D.N.Y. Jan. 17, 2002).....	17-18
<u>Bates v. C&S Adjusters, Inc.</u> , 980 F.2d 865 (2d Cir. 1992).....	17
<u>Constitution Reinsurance Co. v. Stonewall Ins. Co.</u> , 872 F. Supp. 1247 (S.D.N.Y. 1995).....	18
<u>CutCo Industries, Inc. v. Naughton</u> , 806 F.2d 361 (2d Cir. 1986).....	9, 10, 11
<u>Department of Transportation v. City of Atlanta</u> , 380 S.E.2d 265 (Ga. 1989).....	22
<u>Drabik v. Murphy</u> , 246 F.2d 408 (2d Cir. 1957).....	6
<u>ESI, Inc. v. Coastal Power Production Co.</u> , 995 F. Supp. 419 (S.D.N.Y. 1998).....	17, 18
<u>Greenblatt v. Gluck</u> , 265 F. Supp. 2d 346 (S.D.N.Y. 2003).....	17
<u>ICC Primex Plastics Corp. v. LA/ES Laminati Estrusi Termo-Plastici S.P.A.</u> , 775 F. Supp. 650 (S.D.N.Y. 1995).....	11
<u>In re Blutrich Herman & Miller</u> , 227 B.R. 53 (Bankr., S.D.N.Y. 1998).....	6
<u>Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee</u> , 456 U.S. 694 (1982).....	7
<u>International Shoe Co. v. State of Washington</u> , 326 U.S. 310 (1945).....	15
<u>Madison Models, Inc. v. Casta</u> , 2003 U.S. Dist. LEXIS 14844 (S.D.N.Y. Aug. 21, 2003).....	10, 11

<u>Marie Midland Bank, N.A. v. Miller,</u> 664 F.2d 899, 904 (2d Cir. 1981).....	9
<u>McGowan v. Smith,</u> 52 N.Y.2d 268, 419 N.E.2d 321, 437 N.Y.S.2d 643 (1981).....	12
<u>McKee Electric Co. v. Rauland-Borg Corp.,</u> 20 N.Y.2d 377, 229 N.E.2d 604, 283 N.Y.S.2d 34 (1967).....	10
<u>Mende v. Milestone Technology, Inc.,</u> 269 F. Supp. 2d 246 (S.D.N.Y. 2003).....	9, 10
<u>Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Lecopulos,</u> 553 F.2d 842 (2d. Cir. 1977).....	7
<u>Metropolitan Life Insurance Co. v. Robertson-Ceco Corp.,</u> 84 F.3d 560 (2d Cir. 1996).....	9
<u>National Equipment Rental, Ltd. v. Szukent,</u> 375 U.S. 311 (1964).....	7
<u>Okasa v. Hyppolite,</u> 1992 U.S. Dist. LEXIS 1863 (S.D.N.Y. Feb. 19, 1992)	18
<u>Paribas Corp. v. Shelton Ranch Corp.,</u> 742 F. Supp. 86 (S.D.N.Y. 1990).....	7
<u>Premier Lending Services, Inc. v. J.L.J. Assocs.,</u> 924 F. Supp. 13 (S.D.N.Y. 1996).....	11
<u>Robert Diaz Assocs. Enterprises, Inc. v. Elete, Inc.,</u> 2004 U.S. Dist. LEXIS 8620 (S.D.N.Y. May 14, 2004)	18
<u>Robinson v. Overseas Military Sales Corp.,</u> 21 F.3d 502, 507 (2d Cir. 1994).....	10
<u>Rohrer v. FSI Futures, Inc.,</u> 981 F. Supp. 270, 275 (S.D.N.Y. 1997).....	5
<u>Ross v. UKI Ltd.,</u> 2004 U.S. Dist. LEXIS 2970 (S.D.N.Y. Mar. 2, 2004)	12
<u>Sacondy Technologies, Inc. v. Avant, Inc.,</u> 862 F. Supp. 1152 (S.D.N.Y. 1994).....	18
<u>SAS Group, Inc. v. Worldwide Inventions, Inc.,</u> 245 F. Supp. 2d 543 (S.D.N.Y. 2003).....	10, 11, 12, 15

<u>Spier v. Erber,</u> 759 F. Supp. 1024 (S.D.N.Y. 1991).....	7
<u>TBV Holdings Ltd. v. Schey,</u> 2002 U.S. Dist. LEXIS 13682 (S.D.N.Y. July 26, 2002)	19
<u>U.S. Titan, Inc. v. Guangzhou Zhen Hua Shipping Co.,</u> 241 F.3d 135 (2d Cir. 2001).....	18
<u>Ultracashmere House Ltd. v. Madison's of Columbus, Inc.,</u> 534 F. Supp. 542 (S.D.N.Y. 1982).....	7
<u>Xedit Corp. v. Harvel Industries Corp.,</u> 456 F. Supp. 725 (S.D.N.Y. 1978).....	12
<u>Zets v. Scott,</u> 498 F. Supp. 884 (W.D.N.Y. 1980).....	6

Rules

28 U.S.C. § 1391(a)	17, 18, 19
Fed. R. Civ. P. 12(h)(1).....	5
N.Y. CPLR § 302.....	9, 11, 12, 15

Secondary Authorities

10 <u>American Revue of International Arbitration</u> , at 265, 268 (1999).....	22
J. Grenig, <u>Alternative Dispute Resolution</u> , § 7.2 at 117 (West 1997)	22
17 J. Moore, <u>Moore's Federal Practice</u> , § 110.04[2] at 110-42.1 (3d ed. 2004).....	17
5A Wright & Miller, <u>Federal Practice & Procedure</u> , § 1391 at 752 (2d ed. 1990)	5

PRELIMINARY STATEMENT

Plaintiff Gregory V. Serio, Superintendent of Insurance of the State of New York, as Rehabilitator of Frontier Insurance Company (“FIC”) and assignee of Platinum Indemnity, Ltd. (“Platinum”), respectfully submits this memorandum of law in opposition to the defendants’ motion to dismiss the Complaint, compel mediation and stay the above-captioned action.

Defendants Dwight Halvorson Insurance Services, Inc. (“DHIS”) and Food Service Insurance Managers, Inc. (“FSIM”) (collectively, the “Defendants”) raise their jurisdictional challenge in just six lines of legal argument -- without elaboration, without a single supporting affidavit and apparently without much conviction. As discussed below in Point I, this perfunctory approach to the personal jurisdiction issue reflects what the Defendants must know are grave defects in their position. First, the Defendants have waived this jurisdictional objection by failing to raise it in their Answer. Second, the Defendants’ position is undermined by a valid contractual provision in which the parties consented to the jurisdiction of this Court. Third, the Defendants’ position simply cannot be squared with the indisputable fact that they took affirmative steps directed at New York to initiate a business relationship with FIC, entered into an agency agreement with FIC and then, throughout their two-year business relationship with that New York insurance company, engaged in constant interaction with FIC representatives in New York with respect to the very subject matter of this litigation. These contacts are more than sufficient to justify the Court’s exercise of personal jurisdiction pursuant to New York’s long-arm statute.

The Defendants’ venue argument fares no better. As discussed below in Point II, the contract at the heart of this dispute expressly provides that “the parties agree that the courts of

New York shall have exclusive jurisdiction to resolve” any disputes. Moreover, the Defendants’ argument reflects a fundamental misunderstanding of the concept of venue. The controlling venue statute does not require that New York have the most substantial contacts with the dispute of any potential venue; instead, the statute requires only that a substantial part of the underlying events occurred here. The courts consistently have held that, in a contract action, even if the underlying contract was performed and breached elsewhere, venue in New York nonetheless is proper where the parties’ communications relating to the contract flowed to and from New York. In short, the venue requirements are not nearly as restrictive as the Defendants suggest. These liberal requirements compel the conclusion that, given the Defendants’ conduct directed at New York, this district is an appropriate venue for this dispute.

Finally, as discussed below in Point III, there is no merit to the Defendants’ attempt to compel mediation and stay this action. On its face, the mediation provision at issue is permissive rather than mandatory. It provides that “either party may request, in writing, mediation” of any dispute. (emphasis supplied). The Defendants ignore this plain and unambiguous language and essentially ask the Court to rewrite a contractual provision they apparently no longer find advantageous. They do not have that option. Had the parties intended to make mediation mandatory, these sophisticated business entities easily could have done so. The fact that they elected not to do so reflects the reality that mediation, at its core, is a consensual process. At this juncture, FIC has no interest in mediation; instead, it prefers to pursue discovery and litigate this case in order to recover the substantial damages it has sustained in connection with the insurance program in question. The Defendants’ effort to avert discovery, stay this action and compel mediation is without merit.

STATEMENT OF FACTS

A. The Parties

1. FIC

At all times relevant to this dispute, FIC was an insurance company organized and existing under the laws of New York. Based in Rock Hill, New York, FIC served as the fronting carrier for the insurance program giving rise to this dispute. See Complaint, ¶ 9.

2. The Defendants

DHIS at all relevant times was a corporate entity organized and existing under the laws of California and maintained its principal place of business in Roseville, California. Id., ¶¶ 15, 19. It was an insurance agency specializing in providing insurance and risk management services to the food services industry. Id., ¶ 16. At all relevant times, FSIM was a corporate entity organized and existing under California law. Based in Roseville, California, FSIM was engaged in the business of securing workers' compensation insurance coverage for insureds in the agribusiness and food-related industries. Id., ¶¶ 17-19.

B. The FSIM Program

Dwight J. Halvorson, DHIS's president, formed FSIM in or about 1997. Id., ¶ 22. Halvorson had been operating DHIS since 1987. DHIS grew to become a regional leader in that segment of the insurance industry servicing growers, shippers, packers, distributors and processors in Northern California. Id., ¶¶ 20-21. Halvorson established FSIM as part of a comprehensive workers' compensation insurance program developed for and marketed to this industry. Id., ¶ 22.

Halvorson's concept was to secure coverage for his clients through an offshore captive insurance facility. Because neither FSIM nor DHIS were insurers, Halvorson needed to

affiliate with an established carrier willing to “front” the insurance policies covering those clients. The offshore captive would, in turn, reinsure the fronting carrier. *Id.*, ¶¶ 23-32.

C. The Agency Agreement

In late 1997, Halvorson approached FIC to gauge its interest in serving as the fronting carrier for the FSIM insurance program (“FSIM Program”). *Id.*, ¶ 35. After a period of negotiations, FIC and DHIS ultimately entered into a Limited Agency Agreement (“Agency Agreement”) dated effective January 1, 1998. *Id.*, ¶ 38. (A copy of the Agency Agreement is attached as Exhibit C to the accompanying Declaration of Laurie J. Weiss (“Weiss Decl.”)). Therein, FIC appointed DHIS as its agent and authorized DHIS to quote, bind and decline coverage in connection with the FSIM Program. *Id.*, ¶ 39. At the same time, FSIM formed its offshore captive reinsurance facility through a series of agreements with Platinum. *Id.*, ¶¶ 33-34, 50-53.

D. FIC’s Termination of the FSIM Program

FIC terminated the Agency Agreement effective January 1, 2000. *Id.*, ¶ 61. FIC did so due to, among other things, DHIS’s non-compliance with the program’s underwriting guidelines and other provisions of the Agency Agreement. *Id.*, ¶ 62.

Subsequent to the termination of the Agency Agreement, FIC conducted an extensive audit of the FSIM Program. *Id.*, ¶ 63. These audits disclosed that DHIS had improperly withheld from FIC millions of dollars in premium collected from the insureds covered under the FSIM Program. Pursuant to the terms of the Agency Agreement, once DHIS deducted its allowable expenses and fees from the premiums collected from the insureds, the balance should have been -- but in large part was not -- forwarded to FIC. *Id.*, ¶ 64.

ARGUMENT¹

POINT I.

**THE COURT'S EXERCISE OF PERSONAL
JURISDICTION OVER THESE DEFENDANTS IS
ENTIRELY APPROPRIATE UNDER THE CIRCUMSTANCES**

**A. The Defendants Have Waived Any
Objections to Personal Jurisdiction**

The Defendants' jurisdictional challenge is easily disposed of on straightforward procedural grounds. It is well settled that by failing to raise their jurisdictional objection in the Answer, the Defendants have waived their right to do so now. Rule 12(h), in relevant part, provides as follows:

A defense of lack of jurisdiction over the person . . . is waived . . . if it is neither made by motion under this rule nor included in a responsive pleading or amendment thereby permitted by Rule 15(a) to be made as a matter of course.

Fed. R. Civ. P. 12(h)(1). There is no ambiguity or flexibility in this requirement. To the contrary:

"The message conveyed by . . . Rule 12(h)(1) is quite clear. It advises a litigant to exercise great care in challenging personal jurisdiction, venue, or service of process. If he wishes to raise any of these defenses he must do so at the time he makes his first significant defensive move -- whether it be by way of a Rule 12 motion or a responsive pleading."

Rohrer v. FSI Futures, Inc., 981 F. Supp. 270, 275 (S.D.N.Y. 1997) (quoting 5A Wright & Miller, Federal Practice & Procedure, § 1391 at 752 (2d ed. 1990)).

¹ For the Court's convenience, copies of all LEXIS decisions cited herein are attached hereto in alphabetical order.

The Defendants plainly have run afoul of Rule 12(h)(1). On or about June 25, 2004, the Defendants filed their Answer. Therein, they assert no less than seventeen affirmative defenses. Nowhere in the Answer, however, do the Defendants raise any challenge to the Court's exercise of personal jurisdiction over them.²

The courts consistently have precluded defendants from asserting jurisdictional defenses when they have failed to raise them at the earliest opportunity. See e.g., Drabik v. Murphy, 246 F.2d 408, 409 (2d Cir. 1957) (objection to personal jurisdiction rejected where defendant failed to raise the defense in the answer); Zets v. Scott, 498 F. Supp. 884, 885 (W.D.N.Y. 1980) (“[u]nder the plain and unambiguous language” of Rule 12(h), jurisdictional defense “is waived if a preanswer motion is made without including such a defense or if an answer is filed without it and such answer is not amended within twenty days to include such defense”); In re Blutrich Herman & Miller, 227 B.R. 53, 60 (Bankr., S.D.N.Y. 1998) (“[i]t is black letter law that a failure to raise the defense of lack of personal jurisdiction . . . in a pre-answer motion or in an initial responsive pleading waives” that objection). This case should be no exception. FIC respectfully submits that the Defendants’ waiver compels the denial with prejudice of that prong of the motion seeking the dismissal of the Complaint for lack of personal jurisdiction.

² In the First Affirmative Defense, the Defendants object to the Court’s exercise of subject matter jurisdiction. Subject matter jurisdiction and personal jurisdiction are, however, wholly distinct concepts and FIC respectfully submits that the First Affirmative Defense is insufficient to preserve an objection to the Court’s exercise of personal jurisdiction.

B. DHIS Has Consented to the Jurisdiction of this Court

A second, equally fundamental defect undermines the Defendants' jurisdictional argument. In Section 15.2 of the Agency Agreement, the parties expressly agreed "that the courts of New York shall have exclusive jurisdiction" to resolve any disputes between them. See Weiss Decl., Ex. C at § 15.2. Although they quote Article 15 of the Agency Agreement in their brief, the Defendants conveniently overlook the effect that key contractual provision has on their jurisdictional argument.

Contracting parties are free to contractually consent to a court's exercise of personal jurisdiction over them. See Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee, 456 U.S. 694, 703-04 (1982) ("parties to a contract may agree in advance to submit to the jurisdiction of a given court") (quoting National Equip. Rental, Ltd. v. Szukent, 375 U.S. 311, 316 (1964)). The Second Circuit has held that a forum selection clause specifying New York as the parties' preferred venue is tantamount to a consent to personal jurisdiction in New York. See Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Lecopulos, 553 F.2d 842, 844 (2d. Cir. 1977).

Where, as here, a party contractually consents to jurisdiction, the courts have not hesitated to enforce such provisions. See e.g., Spier v. Erber, 759 F. Supp. 1024, 1027 (S.D.N.Y. 1991) (enforcing a jurisdictional consent provision, court states that it "is well-established 'that parties to a contract may agree in advance to submit to the jurisdiction of a given court'") (citation omitted); Paribas Corp. v. Shelton Ranch Corp., 742 F. Supp. 86, 90 (S.D.N.Y. 1990) (enforcing jurisdictional consent provision); Ultracashmere House Ltd. v. Madison's of Columbus, Inc., 534 F. Supp. 542, 545 (S.D.N.Y. 1982) (same). In light of the plain language of

the Agency Agreement's jurisdictional consent provision, DHIS cannot in good faith now challenge the Court's ability to exercise personal jurisdiction in this case.

C. The Defendants' "Transaction of Business" in New York Provides the Basis for Personal Jurisdiction

Even if the Court were to conclude that the Defendants have neither waived their jurisdictional objection nor consented to jurisdiction, well-settled law compels the conclusion that they nonetheless are subject to the jurisdiction of this Court under New York's long-arm statute. This is not a case in which a defendant has been sandbagged by being sued in a jurisdiction with which it had no or perhaps only fleeting contacts. To the contrary, having affirmatively reached out beyond California to solicit FIC's participation in the FSIM Program; having contracted with a New York company; having served as the agent of a New York-based insurer over a two-year period; having been in constant communication with FIC representatives in New York in connection with the day-to-day operations of the FSIM Program; having traveled to New York to meet with FIC representatives with respect to the FSIM Program; and having reaped the substantial benefits flowing from their two-year business relationship with that New York company, the Defendants can hardly be heard to complain of being compelled to defend themselves in a New York court against claims arising out of those very same contacts with New York. The Defendants have cited and can cite no authority supporting a contrary conclusion.

1. New York's Long-Arm Statute

Personal jurisdiction in a diversity action such as this is determined by the laws of the state in which the district court sits. Abert Trading, Inc. v. Kipling Belgium N.V./S.A., 2002 U.S. Dist. LEXIS 3109, at *3-4 (S.D.N.Y. Feb. 26, 2002). In determining "the amenability of a foreign corporation to suit" in a diversity action, "federal law enter[s] the picture only for the

purpose of deciding whether a state's assertion of jurisdiction contravenes a constitutional guarantee.” Metropolitan Life Ins. Co. v. Robertson-Ceco Corp., 84 F.3d 560, 567 (2d Cir. 1996) (quoting Arrowsmith v. United Press Int'l, 320 F.2d 219, 223 (2d Cir. 1963).

New York law provides two general bases for the exercise of personal jurisdiction over a non-domiciliary: (1) “general jurisdiction” pursuant to CPLR 301, and (2) “specific jurisdiction” pursuant to CPLR 302. Here, ample grounds exist for the exercise of “specific” jurisdiction over the Defendants pursuant to CPLR 302(a)(1). CPLR 302(a)(1) provides for the exercise of personal jurisdiction over a non-domiciliary that “transacts any business within the state . . . when the cause of action is related to the transaction” Abert Trading, 2002 U.S. Dist. LEXIS 3109, at *5 (quoting CutCo Indus., Inc. v. Naughton, 806 F.2d 361, 365 (2d Cir. 1986)).³

2. **The “Transacting Business” Requirement**

The transacting business element of CPLR 302(a)(1) “does not require regular and systematic activities but rather the purposeful availment of the privilege of conducting activities within New York, thus invoking the benefits and protections of its laws.” Abert Trading, 2002 U.S. Dist. LEXIS 3109, at *5. CPLR 301(a)(1) “requires only a minimal quantity of activity, provided that it is of the right nature and quality.” Id. In this regard, the “showing necessary for

³ If the Court elects to dispose of the Defendants’ jurisdictional challenge without conducting an evidentiary hearing, FIC “need make only a prima facie showing of jurisdiction through its own affidavits and supporting material” to defeat the motion. Mende v. Milestone Tech., Inc., 269 F. Supp. 2d 246, 251 (S.D.N.Y. 2003) (quoting Marine Midland Bank, N.A. v. Miller, 664 F.2d 899, 904 (2d Cir. 1981). In opposing the motion, FIC is entitled to the benefit of every doubt and the Court “will ‘construe jurisdictional allegations liberally and take as true uncontroverted factual allegations.’” Id. (quoting Robinson v. Overseas Military Sales Corp., 21 F.3d 502, 507 (2d Cir. 1994).

a finding that a defendant 'transacted business' under Section 302(a)(1) is considerably less than the showing required for a finding that a defendant was 'doing business' under Section 301."

Mende v. Milestone Tech., Inc., 269 F. Supp. 2d 246, 255 (S.D.N.Y. 2003). Even if the non-domiciliary never steps foot in New York, a "single transaction might be sufficient to fulfill this requirement so long as the relevant cause of action arises out of that transaction." Id. at 255; see also Madison Models, Inc. v. Casta, 2003 U.S. Dist. LEXIS 14844, at *12 (S.D.N.Y. Aug. 21, 2003).

There "is no fixed standard by which to measure the minimal contacts required to sustain jurisdiction under the provisions of CPLR 302(a)(1)." McKee Elec. Co. v. Rauland-Borg Corp., 20 N.Y.2d 377, 381-82, 229 N.E.2d 604, 607, 283 N.Y.S.2d 34, 37 (1967). The defendant simply must be shown to have "purposefully availed itself of the privileges of conducting activities within the forum State, thus invoking the benefits and protection of its laws." Id. at 382, 229 N.E.2d at 607, 283 N.Y.S.2d at 37-38; see also CutCo Indus., 806 F.2d at 365. In determining whether a defendant's contacts with New York are of the requisite nature and quality, "the Court examines the totality of the circumstances." Abert Trading, 2002 U.S. Dist. LEXIS 3109, at *5. This standard is designed to safeguard against an exercise of personal jurisdiction based on a non-domiciliary's "random," "fortuitous" or "attenuated" contacts with the forum state and ensure that, based on its more substantial ties to that state, the non-domiciliary is provided with "fair warning" of a possibility of being subject to courts of the forum state." SAS Group, Inc. v. Worldwide Inventions, Inc., 245 F. Supp. 2d 543, 548 (S.D.N.Y. 2003).

The test for “transacting business” in a contract action remains “imprecise.”

Premier Lending Servs., Inc. v. J.L.J. Assocs., 924 F. Supp. 13, 15-16 (S.D.N.Y. 1996).

Nevertheless, certain general principles have evolved and inform the Court’s analysis of whether an exercise of jurisdiction under CPLR 302(a)(1) is appropriate here. See SAS, 245 F. Supp. 2d at 548. First, “any contract negotiations which indicate a purposeful invocation of the laws of New York State are transactions of business for purposes of New York’s long arm statute[.]” Id. (quoting Premier Lending, 924 F. Supp. at 15-16). In this regard, “[i]t does not matter whether the negotiations are preliminary, whether the contract is executed in New York, or whether performance is contemplated for New York.” Id. at 549. In addition, “contract negotiations in New York will satisfy [CPLR 302(a)(1)] if the discussions substantially advanced or were essential to the formation of the contract or advanced the business relationship to a more solid level.” Id. (quoting ICC Primex Plastics Corp. v. LA/ES Laminati Estrusi Termo-Plastici S.P.A., 775 F. Supp. 650, 655 (S.D.N.Y. 1995).

The day-to-day communications between contracting parties is also relevant to the jurisdictional analysis. As this Court has observed, “[v]oluminous interaction in the form of phone calls, e-mails and faxes” from the non-domiciliary to New York is a factor under CPLR 302(a)(1). See Abert Trading, 2002 U.S. Dist. LEXIS 3109, at *6. The parties’ selection of New York law in a choice of law provision is also a relevant factor. See CutCo Indus., 806 F.2d at 367. Whether the contracting parties stipulate that New York is a proper venue for any dispute between them is an additional consideration to be factored into the jurisdictional analysis. Madison Models, 2003 U.S. Dist LEXIS 14844, at *13-14. In addition, whether the underlying contract requires the non-domiciliary to forward notices or payments to New York is a relevant

factor. Id. Similarly, the courts consider whether the contract requires the supervision of the non-domiciliary by a person located within New York. Id.

3. The “Arising Out of” Requirement

A claim “arises out of” a transaction under CPLR 302(a)(1) where there is “some articulable nexus between the business transacted and the cause of action sued upon.” Ross v. UKI Ltd., 2004 U.S. Dist. LEXIS 2970, at *11 (S.D.N.Y. Mar. 2, 2004) (quoting McGowan v. Smith, 52 N.Y.2d 268, 272, 419 N.E.2d 321, 323, 437 N.Y.S.2d 643, 645 (1981)). The defendant’s contacts with New York “must be substantially proximate to the allegedly unlawful act before the cause of action can be said to arise out of those activities.” Xedit Corp. v. Harvel Indus. Corp., 456 F. Supp. 725, 729 (S.D.N.Y. 1978).

4. The Defendants’ Fall Within Reach of New York’s Long-Arm Statute

The Defendants have marshaled and can marshal no evidence demonstrating that their contacts with New York in relation to the subject matter of this litigation were in any way “random,” “fortuitous” or “attenuated.” See SAS Group, 245 F. Supp. 2d at 548. Indeed, the record reflects that, in connection with the FSIM Program, the Defendants purposefully availed themselves of the privileges of conducting business in New York and contracting with a New York entity. For example:

- In late 1997, DHIS reached out from California to FIC representatives in New York to solicit FIC’s participation as the “fronting” carrier for the FSIM Program. See Complaint, ¶ 35; Weiss Decl., ¶¶ 6-7, Ex. A.
- When FIC expressed an interest in the FSIM program, DHIS engaged in a series of negotiations with FIC representatives based in New York. These negotiations involved a substantial volume of

communications by telephone and otherwise between the Defendants in California and FIC representatives in New York. See Complaint, ¶ 36; Weiss Decl., ¶ 8.

- During the course of these negotiations, the Defendants forwarded to FIC in New York information critical to FIC's decision to participate in the FIC Program, including an overview of the nature of the program, a completed application, information regarding their errors and omissions insurance coverage, licenses, resumes of key personnel and a financial statement. See Weiss Decl., ¶ 9, Ex. B.
- These negotiations ultimately led to the parties' execution of the Agency Agreement pursuant to which DHIS agreed to serve as the agent of a New York-based insurance company. See Complaint, ¶¶ 38-39; Weiss Decl., ¶ 10, Ex. C.
- The Agency Agreement was drafted by FIC and its counsel in New York. Certain of its terms were the subject of detailed communications between the Defendants in California and FIC representatives in New York. FIC executed the Agency Agreement in New York. DHIS executed the contract in California and forwarded it to FIC in New York. See Weiss Decl., ¶ 11.
- During the course of their two-year business relationship with a New York corporation, the Defendants' representatives traveled to New York to meet with FIC representatives in connection with the FSIM Program. See Weiss Decl., ¶ 15, Ex. D.
- During the course of the parties' two-year business relationship, the Defendants placed countless telephone calls to FIC managers in New York with respect to the FSIM Program. Id., ¶ 16.
- During 1998 and 1999, there was a substantial flow of correspondence from the Defendants to FIC in New York with respect to the FSIM Program. Id., ¶ 17, Exs. E, F.

- In the Agency Agreement, DHIS agreed that New York law would control in resolving any dispute arising between the parties. See Complaint, ¶ 49; Weiss Decl., Ex. C at § 15.2.
- In the Agency Agreement, DHIS agreed that the courts of New York would have exclusive jurisdiction over any dispute arising between the parties. Id.
- Pursuant to the Agency Agreement, FIC's activities as FIC's agent were to be supervised by FIC representatives based in New York. See Weiss Decl., ¶ 12.
- Pursuant to the Agency Agreement, DHIS obligated itself to forward and did forward to FIC in New York the monthly Account Current reports which are at the heart of this dispute. See Complaint, ¶¶ 42-43; Weiss Decl., ¶ 20, Ex. C at § 6.1.
- Pursuant to the Agency Agreement, DHIS obligated itself to forward and did forward to FIC in New York monies reflecting the balance due on the Accounts Current reports in the form of both checks for deposit into FIC's New York bank account and wire transfers to FIC's New York bank. See Complaint, ¶ 44; Weiss Decl., ¶ 18, Ex. G, Ex. H and Ex. C at § 6.2.
- FSIM claims to have forwarded to FIC in New York certain additional capital contributions reflecting a percentage of the gross written premiums under the program. See Answer, ¶ 129.
- DHIS was obligated under the Agency Agreement to forward to FIC in New York notices of claims it received with respect to insurance policies issued through the FSIM program. See Weiss Decl., Ex. C at § 3.11.
- DHIS obligated itself under the Agency Agreement to forward to FIC in New York DHIS's audited financials. Id., § 5.11.

- DHIS obligated itself under the Agency Agreement to forward to FIC in New York regular reports regarding all premium trust account transactions. Id., § 8.5.
- One of the banks through which payments were made under promissory note at issue in this litigation was Chase Manhattan Bank, N.A. in New York. See Complaint, Ex. A at Schedule 1.

Notwithstanding their tepid assertions to the contrary, these substantial New York contacts demonstrate that the Defendants “‘deliberately reached out beyond [their] home state for the purpose of establishing a business relationship” with a New York entity and “as a result, purposefully availed [themselves] of the forum and should have reasonably foreseen being haled into court here.”’ SAS Group, 245 F. Supp. 2d at 547. Each of the New York contacts highlighted above “‘substantially advanced or were essential to the formation of the contract or advanced the business relationship to a more solid level.”’ Id. at 549. The Defendants cannot credibly deny that FIC’s claims arise out of these contacts.

In short, CPLR 301(a)(2) provides a rock-solid basis for jurisdiction over the Defendants. Given the overall set of circumstances surrounding the FSIM Program and its demise, the Court may exercise that jurisdiction without offending “traditional notions of fair play and substantial justice” because, given their purposeful activity directed at New York, the Defendants reasonably should have foreseen being sued in New York based on their contacts with New York. See International Shoe Co. v. State of Washington, 326 U.S. 310, 316 (1945). Accordingly, FIC respectfully requests that the Court deny with prejudice that prong of the Defendants’ motion seeking dismissal of the Complaint for lack of personal jurisdiction.

POINT II.

**NEW YORK IS A PROPER
VENUE FOR THIS DISPUTE**

**A. The Forum Selection Clause Expressly Provides
For Disputes to Be Venued in New York**

In disposing of the Defendants' contention at page 4 of their brief that "there is no basis for venue in this district," the Court need look no further than the Agency Agreement. As noted above, Section 15.2 of the Agency Agreement, in relevant part, provides:

[T]he parties agree that the courts of New York shall have exclusive jurisdiction to resolve [any disputes].

Weiss Decl., Ex. C at § 15.2. This provision is fatal to DHIS's venue argument.

**B. This District Is a Proper Venue Because a Substantial
Part of the Underlying Events Occurred in New York**

The Defendants' venue argument suffers from an additional defect in that it reflects a fundamental misunderstanding of the concept of venue. In just five lines of argument at page 4 of their brief, the Defendants contend that venue is improper because the Defendants are California, not New York, corporations. Of course, if the Defendants' status as California corporations in and of itself was sufficient to preclude venue in New York, no New York-based party to a contract with a California-based entity could maintain a breach of contract claim in New York against the California-based party. This simplistic position, for which the Defendants cite no authority, is without merit.

The only other argument the Defendants raise is that New York is an improper venue because "the activities contemplated and performed under" the Agency Agreement "were limited to California and in [sic] Arizona." Once again, the Defendants cite no support for this position, which does not withstand scrutiny. According to the Defendants' theory of venue, no

New York-based party to a contract could sue a breaching party in New York for failing to fulfill its obligations that were to have been performed outside of New York. This position has no basis in law or logic, as is reflected by the Defendants' failure to cite a single case in support of it.

Contrary to the Defendants' apparent belief, venue is neither a black-and-white nor an all-or-nothing proposition. Any meaningful analysis of venue in a diversity action must focus on the flexible requirements of 28 U.S.C. § 1391(a). Section 1391(a)(2) provides that venue properly lies in a "judicial district in which a substantial part of the events or omissions giving rise to the claim occurred[.]" 28 U.S.C. § 1391(a)(2). As one leading authority on federal procedure has observed, the courts "generally are appropriately interpreting" this venue statute "broadly as intended by Congress." See 17 J. Moore, Moore's Federal Practice, § 110.04[2] at 110-42.1 (3d ed. 2004).

Section 1391(a) does not require a litigant to commence an action in "the best venue." Bates v. C&S Adjusters, Inc., 980 F.2d 865, 867 (2d Cir. 1992). It "does not require venue in the district with the most substantial contracts to the dispute. Rather, it is sufficient that a substantial part of the event occurred in the challenged venue, even if a greater part of the events occurred elsewhere." Astor Holdings, Inc. v Roski, 2002 U.S. Dist. LEXIS 758, at *22 (S.D.N.Y. Jan. 17, 2002) (emphasis supplied); see also Greenblatt v. Gluck, 265 F. Supp. 2d 346, 352 (S.D.N.Y. 2003). In fact, venue may properly lie in more than one district. ESI, Inc. v. Coastal Power Prod. Co., 995 F. Supp. 419, 424 (S.D.N.Y. 1998). This liberal standard:

[A]cknowledges the more porous borders of the electronic age where events can be influenced anywhere in the world by fax, phone and keystroke, and recognizes that a person acting predominantly in one state can easily cause his or her acts to have effects outside the borders of that state.

Astor Holdings, 2002 U.S. Dist. LEXIS 758, at *22.

What the Defendants overlook is that, in a contract action, venue may be proper in a district where the contract was substantially negotiated, drafted and executed even if the contract was not performed there and the alleged breach occurred elsewhere. ESI, 995 F. Supp. at 425; see also Okasa v. Hyppolite, 1992 U.S. Dist. LEXIS 1863, at *2-3 (S.D.N.Y. Feb. 19, 1992) (venue proper because extensive negotiations and preparations for formation of contract occurred in forum state). Indeed, the venue requirements of Section 1391(a)(2) “may be satisfied by a communication transmitted to or from the district in which the cause of action was filed given a sufficient relationship between the communication and the cause of action.” Constitution Reins. Co. v. Stonewall Ins. Co., 872 F. Supp. 1247, 1249 (S.D.N.Y. 1995) (citation omitted).

In Sacondy Technologies, Inc. v. Avant, Inc., 862 F. Supp. 1152 (S.D.N.Y. 1994), for example, the Southern District of New York was found to be a proper venue where “at least some of defendants’ dealings” with the plaintiff in connection with the underlying contract “took place over the phone and by correspondence and facsimile between [defendant] in Massachusetts and [plaintiff] in New York, respectively.” Id. at 1157. In addition, the Sacondy Technologies court emphasized that the underlying contract “was transmitted from and to [plaintiff’s] offices within this district.” Id.; see also U.S. Titan, Inc. v. Guangzhou Zhen Hua Shipping Co., 241 F.3d 135, 153 (2d Cir. 2001) (venue in New York deemed proper based on fact that defendant “directed communications to New York”); Robert Diaz Assocs. Enters., Inc. v. Elete, Inc., 2004 U.S. Dist. LEXIS 8620, at *24 (S.D.N.Y. May 14, 2004) (New York found to be an appropriate venue given, among other things, the fact that defendant signed the contract in Colorado and

faxed it to plaintiff in Manhattan and sent e-mails to Manhattan); TBV Holdings Ltd. v. Schey, 2002 U.S. Dist. LEXIS 13682, at *4 (S.D.N.Y. July 26, 2002) (finding a substantial part of the events giving rise to the contract claims occurred in New York where, among other things, contract was negotiated over the telephone between plaintiff in New York and defendant in Florida; the contract was prepared in New York and ultimately returned from Florida to New York after execution; and plaintiff performed its contractual obligations in New York).

The Defendants' substantial and long-running contacts with New York with respect to the subject matter of this jurisdiction, as detailed above in Point I. C., demonstrate that this district is a proper venue for this dispute. The parties' business dealings included, among other things, face-to-face meetings in Sullivan County. The parties' business relationship was initiated by the Defendants' decision to reach out to FIC managers in Sullivan County to solicit their participation in the FSIM Program. The underlying contract was negotiated via communications the Defendants had with FIC managers in Sullivan County. The parties' contractual relationship was formalized when the Defendants forwarded the executed Agency Agreement to FIC in Sullivan County. Throughout the course of the parties' two-year relationship, the Defendants on countless occasions conducted their business with FIC through telephone calls, faxes and correspondence directed to FIC managers in Sullivan County. Throughout this time, the payments due to FIC under the Agency Agreement -- payments that go to the very heart of this dispute -- were forwarded by the Defendants to FIC managers for deposit in FIC's account at a New York bank.

These contacts establish that, for purposes of 28 U.S.C. 1391(a)(2), a substantial part of the Defendants' acts or omissions giving rise to this action occurred within this district.

Accordingly, FIC respectfully submits that the Defendants motion to dismiss the Complaint for improper venue should be denied with prejudice.

POINT III.

THE MEDIATION CLAUSE IS PERMISSIVE RATHER THAN MANDATORY AND PROVIDES NO BASIS FOR A STAY OF THIS ACTION

The Defendants' contention that FIC should be compelled to mediate this dispute is premised upon a gross misreading of the plain language of the contractual provision at issue. Only by once again ignoring the unambiguous language of the Agency Agreement could the Defendants assert at pages 2 and 3 of their brief that the parties have agreed that any dispute between them "was to be submitted to mediation" or that the Agency Agreement "provides that disputes are to be submitted to mediation." The Agency Agreement provides for no such thing. Section 15.1 of the Agency Agreement, in relevant part, provides:

If irreconcilable differences arise as to the business done under this Agreement, either party may request, in writing, mediation of such differences.

Weiss Decl., Ex. C at § 15.1 (emphasis supplied).

Clearly, this mediation provision is permissive rather than mandatory in nature. It reflects the plain intention of the parties to provide for a process though which they may resort to mediation if, under the circumstances, they both deem mediation to be a beneficial alternative to litigation. Accordingly, either party is left the option of raising the possibility of mediation by requesting that the other party agree to mediate. Only if the other party grants the request, however, would the dispute then proceed to mediation under the American Arbitration Association's Commercial Mediation Rules.

Section 15.1 does not provide, as the Defendants suggest, that either party to the Agency Agreement unilaterally can demand or compel mediation. It does not provide that if one of the parties favors mediation, the other shall or must consent to mediation. The parties to the Agency Agreement knew how to use mandatory language when they intended to impose firm obligations. Similarly, they knew how to use permissive language when it was their intention to do so. Indeed, the word “shall” appears no less than 125 times in the Agency Agreement. The word “may” appears just 15 times. The terms plainly were intended to reflect differing intentions. They were not intended to be used interchangeably.

Against this backdrop, the phrase “may request” in the Agency Agreement’s mediation provision cannot reasonably be construed to mean “may compel” or “may demand.” Yet this is precisely how the Defendants would have the Court interpret the mediation clause. A “request” is just that -- a request. Under the plain language of Section 15.1, as the recipient of any request to mediate, FIC at all times remains free to grant, deny or simply ignore any such request. The Defendants’ argument to the contrary is a transparent attempt to rewrite a contractual provision they apparently no longer view as being to their advantage.

The reality is that if the Defendants genuinely believed that Section 15.1 empowered them to compel mediation, they would have done so when they first raised the issue of mediation more than three years ago. See Answer, Ex. D. Significantly, at that time the Defendants did not purport to demand mediation. To the contrary, in keeping with the permissive nature of Section 15.1, the Defendants wrote to FIC “requesting mediation,” noting that “mediation is requested” in response to certain issues FIC had raised in earlier correspondence. Id. (emphasis supplied). The fact that the Defendants took no legal steps three

years ago to compel mediation strongly supports the conclusion that they have no basis for doing so now.

The plain and unambiguously permissive language of Section 15.1 is entirely consistent with the nature of the mediation process itself. It reflects the reality that, in most instances, “compelled mediation” is an oxymoron. First and foremost, mediation is a “voluntary process.” Department of Transp. v. City of Atlanta, 380 S.E.2d 265, 268 (Ga. 1989). Given the nature of the mediation process, “[i]t is incongruous to say one may order another to mediate a dispute so that it violates the first premise of mediation, that it is a voluntary process.” Id.; see also 10 Am. Rev. Int’l Arb., 265, 268 (1999) (the “most critical difference” between mediation and arbitration is that mediation is a “consensual procedure, facilitated by a neutral third party without any decisional power”). Of course, contracting parties are free to alter this fundamental tenet and compel the mediation of any dispute. The fact remains, however, that FIC and the Defendants did not elect to do so here.

One of the basic dynamics of mediation is that “for mediation to be effective, it is necessary that the parties have a good faith interest in settling their dispute.” J. Grenig, Alternative Dispute Resolution, § 7.2 at 117 (West 1997). To require FIC to mediate when, at this time, it has no interest in doing so is inconsistent with this principle. Absent FIC’s commitment to what by definition is a consensual process, any compelled mediation of this dispute is virtually doomed to failure. Although FIC’s position with respect to mediation may change at a later juncture -- perhaps after some preliminary discovery has been taken, for example, or if the factual and legal issues are substantially narrowed -- at present it prefers to litigate, as is its prerogative. For their part, the Defendants no doubt would prefer to avoid any

inquiry into their conduct in operating the FSIM Program and attempt, instead, to secure a pre-discovery resolution to this matter. From FIC's perspective, however, an aggressive pursuit of discovery into the Defendants' acts and omissions is crucial to recouping the substantial damages it has incurred in connection with the FSIM Program. Under these circumstances, FIC respectfully submits that the Defendants' application to compel mediation and stay this action should be denied with prejudice.


CONCLUSION

For the reasons set forth above, plaintiff Gregory V. Serio, Superintendent of Insurance of the State of New York, as Rehabilitator of Frontier Insurance Company and assignee of Platinum Indemnity, Ltd., respectfully requests that the Court deny in its entirety the Defendants' motion to dismiss the Complaint, compel mediation and stay the action.

Dated: New York, New York
September 27, 2004

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By: _____


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Rehabilitator of Frontier Insurance Company and as
Assignee of Platinum Indemnity, Ltd.

LEXIS Decisions

ABERT TRADING, INC., Plaintiff, -against- KIPLING BELGIUM N.V./S.A., Defendant.

00 Civ. 0478 (RMB)

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

2002 U.S. Dist. LEXIS 3109

February 26, 2002, Decided

February 26, 2002, Filed

DISPOSITION: [*1] Defendant's motion for summary judgment to dismiss this case for lack of personal jurisdiction denied; Defendant's motion for summary judgment to dismiss this case based on the doctrine of forum non conveniens granted; and Defendant's motion for summary judgment to dismiss the complaint denied as moot.

CASE SUMMARY

PROCEDURAL POSTURE: The corporation brought suit against the foreign company for breach of contract. The foreign company moved for summary judgment dismissing the case for lack of personal jurisdiction and based on the doctrine of forum non conveniens. The foreign company also moved for summary judgment dismissing the complaint on the merits of the asserted claims.

OVERVIEW: The corporation and the foreign company entered into an agreement under which the foreign company sold, delivered, and shipped merchandise to the corporation in New York. The corporation brought suit for breach of contract and the foreign corporation filed motions for summary judgment. The court found that the corporation made a showing of jurisdiction based upon the totality of the circumstances. Those circumstances included the facts that at least some of the negotiations that surrounded the agreement entered into between the corporation and the foreign company occurred in New York, a meeting took place in the foreign company's New York showroom, and the foreign company engaged in promotional activities in New York. Thus, the court concluded that the exercise of personal jurisdiction would not offend traditional notions of fair play and substantial justice. The court found that the private interest factors weighed so heavily in favor of the foreign forum that they overcame any presumption for the corporation's choice of forum. The public interest factors weighed substantially in favor of a Belgian forum.

OUTCOME: The foreign company's motion for summary judgment to dismiss the case for lack of personal jurisdiction was denied. The foreign

company's motion for summary judgment to dismiss the case based on the doctrine of forum non conveniens was granted, and the foreign company's motion for summary judgment to dismiss the complaint was denied as moot.

CORE TERMS: conveniens, summary judgment, alternative forum, doctrine of forum, choice of forum, weigh, lack of personal jurisdiction, personal jurisdiction, public interest, foreign law, negotiation, causes of action, cause of action, foreign forum, moving party, invoices, reside, evidentiary hearing, compulsory process, judicial economy, substantive law, general subject, choice of law, forum state, prima facie, duty free, jury duty, block, unsatisfactory, inappropriate

LexisNexis(TM) Headnotes

Civil Procedure > Summary Judgment > Summary Judgment Standard

[HN1]The standard for granting summary judgment is well established. Summary judgment may not be granted unless the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c).

Civil Procedure > Summary Judgment > Burdens of Production & Proof

[HN2]On a motion for summary judgment, the moving party bears the initial burden of informing the district court of the basis for its motion and identifying the matter that it believes demonstrates the absence of a genuine issue of material fact. The burden then shifts to the nonmoving party which must set forth specific facts showing that there is a genuine issue for trial. Fed. R. Civ. P. 56(e). The substantive law governing the case will identify those facts which are material and only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. In determining whether summary judgment is appropriate, a court must resolve all ambiguities and

draw all reasonable inferences against the moving party.

Civil Procedure > Jurisdiction > Personal Jurisdiction & In Rem Actions > Personal Jurisdiction

Civil Procedure > State & Federal Interrelationships > Application of State Law

[HN3]Personal jurisdiction in a diversity action is determined by the laws of the forum state in which the district court sits. Fed. R. Civ. P. 12(d) grants the court broad discretion to hear and decide a motion to dismiss for lack of personal jurisdiction before trial or to defer the matter until trial. The court may decide the motion solely upon pleadings and affidavits or by an evidentiary proceeding. Where the court chooses not to conduct an evidentiary hearing before trial, a plaintiff need only make a prima facie showing of personal jurisdiction over the defendant.

Civil Procedure > Jurisdiction > Personal Jurisdiction & In Rem Actions > Personal Jurisdiction

[HN4]N.Y. C.P.L.R. 302(a)(1), part of New York's long-arm statute, allows personal jurisdiction over any non-domiciliary who in person or through an agent transacts any business within the state or contracts anywhere to supply goods or services in the state when the cause of action is related to the transaction or the contract. The transacting business test does not require regular and systematic activities but rather the purposeful availment of the privilege of conducting activities within New York, thus invoking the benefits and protections of its laws. N.Y. C.P.L.R. 302(a)(1), requires only a minimal quantity of activity, provided that it is of the right nature and quality. In determining whether a defendant's contacts are of the appropriate nature, the court examines the totality of the circumstances. Jurisdiction can be grounded on a combination of seemingly separate events, any one of which, standing alone, would be insufficient to confer jurisdiction.

Civil Procedure > Venue > Change of Venue in Federal Courts

Civil Procedure > Venue > Forum Non Conveniens

[HN5]Congress' enactment of 28 U.S.C.S. § 1404(a), which authorizes transfers between federal courts, relegated common law forum non conveniens to cases where the alternative forum to which a transfer is proposed is a foreign one. Dismissal under the doctrine of forum non conveniens involves a balancing test in which the court first considers the availability of an alternative forum, and second balances the private interest factors affecting the convenience of the

litigants and the public interest factors affecting the convenience of the forum. A defendant's burden is heavy, as there is ordinarily a strong presumption in favor of the plaintiff's choice of forum. The forum non conveniens determination is committed to the sound discretion of the trial court.

Civil Procedure > Venue > Forum Non Conveniens

[HN6]At the outset of any forum non conveniens inquiry, the court must determine whether there exists an alternative forum. That requirement is ordinarily satisfied when the defendant is amenable to process in the competing forum. An agreement by the defendant to submit to the jurisdiction of the foreign forum can generally satisfy that requirement.

Civil Procedure > Venue > Forum Non Conveniens

[HN7]The U.S. Court of Appeals for the Second Circuit has affirmed dismissal on the grounds of forum non conveniens where the defendant has already commenced suit in the alternative foreign forum.

Civil Procedure > Venue > Forum Non Conveniens

[HN8]In the context of forum non conveniens, the United States Court of Appeals for the Second Circuit makes clear that on rare occasion the remedy available in the alternative forum may be so unsatisfactory that the forum is inadequate. Concluding that the foreign forum is inappropriate is a rare exception and not the rule.

Civil Procedure > Venue > Forum Non Conveniens

[HN9]The United States Supreme Court has held that the possibility of a change in substantive law should ordinarily not be given conclusive or even substantial weight in the forum non conveniens inquiry.

Civil Procedure > Venue > Forum Non Conveniens

[HN10]In the context of a motion to dismiss based on the doctrine of forum non conveniens, courts in the Second Circuit have found that an alternative jurisdiction is not rendered inappropriate simply because not all of the contemplated causes of action are available there, so long as the general subject matter of the litigation can be heard there.

Civil Procedure > Venue > Forum Non Conveniens

[HN11]In the context of a forum non conveniens inquiry, the United States Supreme Court stated that the following private interest factors should be considered: (1) ease of access to sources of proof; (2) the cost of obtaining attendance of willing witnesses; (3) the availability of compulsory process for unwilling witnesses; (4) the enforceability of a judgment if one is obtained; and (5) evidence of a plaintiff's attempt to harass a defendant by its choice of forum. In addition

to those factors, the court must take into consideration the presumption in favor of the plaintiff's choice of forum. Dismissal is warranted where those factors weigh heavily in favor of the alternative forum.

International Law > Dispute Resolution > Conflicts of Laws

Civil Procedure > Entry of Judgments > Enforcement & Execution > Foreign Judgments

[HN12]See Belgian Judicial Code § 570.

Civil Procedure > Venue > Forum Non Conveniens

[HN13]A plaintiff may not, by choice of an inconvenient forum, vex, harass, or oppress the defendant by inflicting upon him expense or trouble not necessary to his own right to pursue his remedy.

Civil Procedure > Venue > Forum Non Conveniens

[HN14]In the context of a forum non conveniens inquiry, a plaintiff's home choice of forum should be given full weight.

Civil Procedure > Venue > Forum Non Conveniens

[HN15]In the context of a forum non conveniens inquiry, the United States Supreme Court identified four public interest factors to weigh: (1) the interest in having localized controversies decided at home; (2) the burden of jury duty on citizens not interested in the controversy; (3) congestion of the courts' dockets; and (4) the need to apply foreign law. Courts in the Southern District of New York have also considered the efficiency of combining related suits in a single forum.

Civil Procedure > Venue > Forum Non Conveniens

[HN16]In the context of a forum non conveniens inquiry, the fact that a plaintiff is a corporation in the forum state does not, by itself, vest the forum and its jurors with an interest in the litigation. To impose jury duty on the residents of a district is unfair where there is no local interest in the controversy.

Civil Procedure > Venue > Forum Non Conveniens

[HN17]In the context of a forum non conveniens inquiry, it is well-recognized that the Southern District of New York is a congested district, and there is a legitimate interest in ensuring that disputes with little connection to the district be litigated elsewhere.

Civil Procedure > Venue > Forum Non Conveniens

Civil Procedure > State & Federal Interrelationships > Choice of Law

[HN18]In the context of a forum non conveniens inquiry, with respect to whether foreign law will apply, the likelihood that foreign law will apply weighs

against retention of the action. A federal district court applies the choice-of-law rules of the forum state. Under New York law, in contract cases, courts follow a center of gravity or grouping of contacts approach. Among others, the factors considered are the place of contracting, the places of negotiation and performance, the location of the subject matter, and the domicile or place of business of the contracting parties. While the prospect of applying foreign law is not dispositive in favor of dismissal, it is relevant.

COUNSEL: For ABERT TRADING, INC., plaintiff: Harlan M. Lazarus, Lazarus & Lazarus, P.C., New York, NY.

JUDGES: RICHARD M. BERMAN, U.S.D.J.

OPINIONBY: RICHARD M. BERMAN

OPINION: DECISION & ORDER

I. Introduction

This ruling addresses and resolves the following three motions in Abert Trading, Inc. v. Kipling Belgium N.V./S.A., all of which were filed pursuant to Federal Rule of Civil Procedure 56 and were completely briefed on or about May 30, 2001: (i) Defendant Kipling Belgium's ("Defendant" or "Kipling") motion to for summary judgment dismissing this case for lack of personal jurisdiction; (ii) Defendant's motion for summary judgment dismissing the complaint based on the doctrine of forum non conveniens; and (iii) Defendant's motion for summary judgment dismissing the complaint (on the merits of the asserted claims). The facts relevant to this decision are set forth in the section below [*2] entitled "III. Analysis." **For the following reasons, Defendant's motion for summary judgment based upon the doctrine of forum non conveniens is granted, and the instant case is dismissed in favor of a related commercial litigation pending in the Sixth Division of the Commercial Court of Antwerp, Belgium.**

II. Standard of Review

[HN1]The standard for granting summary judgment is well established. Summary judgment may not be granted unless "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c); see also Celotex Corp. v. Catrett, 477 U.S. 317, 91 L. Ed. 2d 265, 106 S. Ct. 2548 (1986); Gallo v. Prudential Residential Servs., Ltd. P'ship, 22 F.3d 1219, 1223 (2d Cir. 1994).

[HN2]The moving party bears the initial burden of "informing the district court of the basis for its motion" and identifying the matter that "it believes demonstrates the absence of a genuine issue of material fact." Celotex, 477 U.S. at 323. The burden then shifts to the nonmoving party which "must set forth specific [*3] facts showing that there is a genuine issue for trial." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 91 L. Ed. 2d 202, 106 S. Ct. 2505 (1986) (quoting Fed. R. Civ. P. 56(e)); accord Brass v. American Film Technologies, Inc., 987 F.2d 142 (2d Cir. 1993). The substantive law governing the case will identify those facts which are material and "only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." Anderson, 477 U.S. at 248. In determining whether summary judgment is appropriate, a court must resolve all ambiguities and draw all reasonable inferences against the moving party. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587, 89 L. Ed. 2d 538, 106 S. Ct. 1348 (1986) (citing United States v. Diebold, Inc., 369 U.S. 654, 655, 8 L. Ed. 2d 176, 82 S. Ct. 993 (1962)); see also Gallo, 22 F.3d at 1223.

III. Analysis

A. Personal Jurisdiction

[HN3]Personal jurisdiction in a diversity action is determined by the laws of the forum state in which the district court sits; [*4] therefore the law of new York is applicable to this case. See United States v. First Nat'l City Bank, 379 U.S. 378, 381-82, 13 L. Ed. 2d 365, 85 S. Ct. 528 (1965). Fed. R. Civ. P. 12(d) grants the court broad discretion to hear and decide a motion to dismiss for lack of personal jurisdiction before trial or to defer the matter until trial. See CutCo Indus., Inc. v. Naughton, 806 F.2d 361, 364 (2d Cir. 1986). n1 The court may decide the motion solely upon pleadings and affidavits or by an evidentiary proceeding. Id. Where the court chooses not to conduct an evidentiary hearing before trial, plaintiff need only make a prima facie showing of personal jurisdiction over the defendant. See Marine Midland Bank, N.A. v. Miller, 664 F.2d 899, 904 (2d Cir. 1981). Here, no evidentiary hearing has been held. See Hoffritz for Cutlery, Inc. v. Amajac, Ltd., 763 F.2d 55, 57 (2d Cir. 1985).

----- Footnotes -----

n1 The Court notes that upon Defendant's motion to dismiss for lack of personal jurisdiction, U.S. Magistrate Judge Peck, on August 8, 2000, denied the motion

without prejudice "on the ground that plaintiff has sufficiently made a prima facie case of personal jurisdiction" Abert Trading, Inc. v. Kipling Belgium N.V./S.A., 00 Civ. 478 (RMB) (AJP), Tr. at 15 (S.D.N.Y. Aug. 8, 2000) (conference).

----- End Footnotes -----

[*5]

Plaintiff contends that the Court has jurisdiction pursuant to Section 302(a)(1) of the New York Civil Practice Law ("CPLR"). [HN4]CPLR § 302(a)(1), part of New York's long-arm statute, allows personal jurisdiction over any non-domiciliary who in person or through an agent "transacts any business within the state or contracts anywhere to supply goods or services in the state" when the cause of action is related to the transaction or the contract. See CutCo Indus., 806 F.2d at 365. The "transacting business" test does not require regular and systematic activities but rather the purposeful availment of the privilege of conducting activities within New York, thus invoking the benefits and protections of its laws. Id. Section 302(a)(1) requires only a minimal quantity of activity, provided that it is of the right nature and quality. See United States Theatre Corp v. Gunwyn/Lansburgh Ltd. P'ship, 825 F. Supp. 594, 595 (S.D.N.Y. 1993) (Conboy, J.). In determining whether defendants's contacts are of the appropriate nature, the Court examines the totality of the circumstances. See Sterling Nat'l Bank v. Fidelity Mortgage Investors, 510 F.2d 870, 873 (2d Cir. 1975); [*6] see also M. Fabrikant & Sons, Inc. v. Adrienne Kahn, Inc., 144 A.D.2d 264, 265, 533 N.Y.S.2d 866 (1st Dept. 1988) ("jurisdiction can be grounded on a combination of seemingly separate events, any one of which, standing alone, would be insufficient to confer jurisdiction."). The Court concludes that Plaintiff has made a prima facie showing of jurisdiction based upon the totality of the following circumstances:

. At least some of the negotiations surrounding the agreement entered into between Plaintiff Abert Trading and Kipling N.V., Defendant Kipling Belgium N.V.'s predecessor company, in or about November 1998, entitled "Letter of Intent, Guidelines and Notes for Final Distribution Agreement" (the "Agreement") occurred in New York;

. A meeting took place on September 8, 1999 in Abert's New York Showroom between, among others, Raphael Avigdor, president of Abert, and Ian Sidall, chairman of the board of Kipling Belgium;

. Defendants engaged in promotional activities in New York including, publishing and distributing sales brochures and maintaining a Web-site, each listing Abert's New York phone and fax numbers as "Kipling" numbers;

. Voluminous interactions [*7] in the form of phone calls, e-mails and faxes between Defendants and Abert's office in New York; and

. Pursuant to the Agreement, Kipling sold, delivered, and shipped to Abert in New York approximately \$ 5,000.00 in sample merchandise.

Considering, among others, the above circumstances, the Court concludes at this stage that the exercise of personal jurisdiction by this Court would not offend "traditional notions of fair play and substantial justice." Int'l Shoe Co. v. Washington, 326 U.S. 310, 316, 90 L. Ed. 95, 66 S. Ct. 154 (1945).

B. Forum Non Conveniens

[HN5]"Congress' . . . enactment of 28 U.S.C. § 1404(a) . . . , which authorizes transfers between federal courts, relegated common law forum non conveniens to cases where the alternative forum to which a transfer is proposed is a foreign one." DiRienzo v. Philip Servs. Corp., 232 F.3d 49 at 56. Dismissal under the doctrine of forum non conveniens involves a balancing test in which the court first considers the availability of an alternative forum, and second balances the "private interest" factors affecting the convenience of the litigants and the "public interest" factors affecting the [*8] convenience of the forum. See Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 508-09, 91 L. Ed. 1055, 67 S. Ct. 839 (1947). Defendant's burden is heavy, as there is ordinarily a strong presumption in favor of the plaintiff's choice of forum. Murray v. British Broadcasting Corp., 81 F.3d 287 (2d Cir. 1996). "The forum non conveniens determination is committed to the sound discretion of the trial court." Piper Aircraft Co. v. Reyno, 454 U.S. 235, 257, 70 L. Ed. 2d 419, 102 S. Ct. 252 (1981).

1. Availability of an Alternative Forum

[HN6]"At the outset of any forum non conveniens inquiry, the court must determine whether there exists an alternative forum." Piper Aircraft, 454 U.S. at 254 n.22. This requirement is ordinarily satisfied when the defendant is "amenable to process" in the competing forum. Gulf Oil, 330 U.S. at 506-07; see also Dirienzo v. Philip Svcs. Corp., 232 F.3d 49, 56 (2d Cir. 2000) ("An agreement by the defendant to submit to the jurisdiction of the foreign forum can generally satisfy this requirement.").

Here, Kipling has already submitted to the jurisdiction of the Belgian [*9] courts, i.e. the Sixth Division of the Commercial Court of Antwerp, by filing suit there against Abert to resolve disputes arising under the same Agreement at issue in this case. n2 [HN7]The U.S. Court of Appeals for the Second Circuit has affirmed dismissal on the grounds of forum non conveniens where, as here, the defendant has already commenced suit in the alternative (foreign) forum. See Alcoa Steamship Co. v. M/V Nordic Regent, 654 F.2d 147, 150 (2d Cir. 1980) (Trinidad). Plaintiff, however, citing Dirienzo v. Philip Svcs. Corp., 232 F.3d 49 (2d Cir. 2000), contends that this first requirement cannot be satisfied because the alternative forum (Belgium) "offers a clearly unsatisfactory or inadequate remedy." Pl. Opp. at 10. Plaintiff asserts that the notion of contract repudiation [another term for a form of breach of contract], i.e. the cause of action asserted here, is not known under Belgian law. Even assuming Plaintiff's contention to be correct, the Court finds Plaintiff's argument to be unpersuasive for the following reasons:(i) [HN8]the Court of Appeals for the Second Circuit, in DiRienzo, makes clear that "on rare occasion . . . [*10] . . . the remedy available in the alternative forum may be so unsatisfactory that the forum is inadequate." 232 F.3d at 56 (emphasis added). Thus, as Defendant contends, concluding that the foreign forum is inappropriate is a "rare" exception and not the rule; and

(ii) [HN9]the U.S. Supreme Court has held that "the possibility of a change in substantive law should ordinarily **not** be given conclusive or even substantial weight in the forum non conveniens inquiry," Piper Aircraft, 454 U.S. at 247; and

(iii) [HN10]other courts in this Circuit have found that "an alternative jurisdiction is **not** rendered inappropriate simply because not all of the contemplated causes of action are available there, so long as the general subject matter of the litigation can be heard there." Alnwick v. European Micro Holdings, Inc., 137 F. Supp. 2d 112, 119 (E.D.N.Y. 2001) (Spatt, J.) (emphasis added); see also PT United Can Co. v. Crown Cork & Seal Co., 138 F.3d 65, 73, 74-75 (2d Cir. 1998) (Indonesia held to be an adequate forum despite unavailability of RICO causes of action; the adequacy of an alternate forum "does not depend on the [*11] existence of the identical cause of action"). Here, the general subject matter of this straightforward commercial/contract litigation can be, **and is being**, heard in Belgium. See also Calavo Growers of California v. Generali Belgium, 632 F.2d 963, 968 (2d Cir. 1998) (dismissing contract suit in favor of continued litigation in Belgium forum).

----- Footnotes -----

n2 Documents which appear to be the summons and other initial papers filed with the Commercial Court in Antwerp are included in the submissions before this Court at Exhibit D of the Decl. of Andrew Walker.

----- End Footnotes-----

2. "Private Interest" Factors

[HN11]The U.S. Supreme Court stated that the following private interest factors should be considered: (1) ease of access to sources of proof, (2) the cost of obtaining attendance of (willing) witnesses, (3) the availability of compulsory process for unwilling witnesses, (4) the enforceability of a judgment if one is obtained, and (5) evidence of plaintiff's attempt to harass defendant by its choice of forum. n3 [*12] Gulf Oil, 330 U.S. at 508-09. In addition to these factors, the Court must take into consideration the presumption in favor of plaintiff's choice of forum. *Id.* Dismissal is warranted where these factors weigh heavily in favor of the alternative forum.

----- Footnotes -----

n3 Courts in this district have also considered additional factors, including "obtaining translations, calculating exchange rates, and the likelihood of needing interpreters." Bybee v. Oper Der Standt Bonn, 899 F. Supp. 1217, 1223 (S.D.N.Y. 1995) (Stein, J.)

----- End Footnotes-----

Abert's president, Mr. Avigdor, has acknowledged that the (bulk of) documentary and real evidence is primarily located in Belgium. n4 Moreover, many of the "events" leading up to the alleged repudiation occurred in and around Belgium.

----- Footnotes -----

n4 Plaintiffs contention that "all of the documents in issue are now available in New York" is unpersuasive. See Alnwick, 137 F. Supp. 2d at 121 (finding that ease of access to sources of proof still weighed in favor of dismissal even where "some 850,000 pages of discovery have been

produced by Plaintiffs, third-parties and Defendants" in New York).

----- End Footnotes-----

[*13]

Second, the three Kipling employees that were deposed by Plaintiff all reside in or near Belgium. Moreover, two of these witnesses do not speak English as his or her primary language and will require a Flemish translator here in New York City. Plaintiff also subpoenaed Mr. Ian Siddall, Chairman of Kipling Belgium, who resides in London. At this juncture, the Court concludes that the (only) essential witness that resides in New York is Mr. Avigdor, the president of Abert who negotiated the letter. n5 And, the record here demonstrates that Mr. Avigdor has, in the past, traveled extensively between Belgium and New York and is already a party in the Belgium litigation.

----- Footnotes -----

n5 Mr. Avigdor declared during his deposition that "I am Abert Trading," and that "I control the decisions of Abert Trading." Avigdor Dep. at 35.

----- End Footnotes-----

Third, two non-party witnesses, Paul Van De Velde and Tony Gram, the two men who founded Kipling N.V. and negotiated the Letter of Intent, both live in Belgium, and thus are subject to the compulsory process [*14] of the Belgium Court.

Fourth, both Plaintiff and Defendant acknowledge that because Belgium does not have a treaty with the United States with regard to enforcement of foreign judgments, the basic provisions of the Belgian Judicial Code apply to any U.S. Judgment that might be reached in this case. Def. Mem. at 15; Aff. of Harlan Lazarus, Ex. 14. Pursuant to the [HN12]Belgian Judicial Code: The Belgian Court will have to examine the merits of the foreign judgment. . . . This examination of the merits of the judgment is compulsory and requires an examination of the trial (not only the procedure, but the dispute as well). . . . The Belgian Court will have to review the reasoning, the application and the interpretation of the law of the foreign court. Belgian Judicial Code § 570 (emphasis in original). Judicial efficiency and avoidance of duplicative litigation argue in favor of Belgium. Moreover, Kipling expressly agrees to be bound by

any judgment from the Belgian Court. Decl. of Andrew Walker P 18.

Fifth, [HN13]"the plaintiff may not, by choice of an inconvenient forum, 'vex', 'harass', or 'oppress' the defendant by inflicting upon him expense or trouble not necessary to [*15] his own right to pursue his remedy." Gulf Oil, 330 U.S. at 508. Without ruling on this factor, the court notes that in one document produced by Plaintiff in discovery entitled "The Nasty Side of RAF [Raphael Avigdor], Mr. Avigdor states:1. Block the importation of Kipling with my contracts stopping goods at the border with my customs contacts.

2. Sue any potential sub distributors who import product as they breach my exclusive rights to the territory as per my contract. Begin by suing any duty free clients who have already brought goods in.

3. Sue Kipling from America

4. Sue Kipling from each and every country in Latin America as covered by my contract

5. Sue the duty free accounts as this is a clear breach of our contract. Aff. of Peter A. Bellacosa, Ex. 34 (emphasis added). Mr. Avigdor also writes: "I want to be clear that we can make your business life difficult. . . . We can sue you from more than one country. I have already consulted lawyers in various of the territories (sic) to investigate our rights to block any imports from any parties which breach (sic) our exclusive rights. We can go as far as to threaten lawsuits from 17 different [*16] countries where you will have to depose in 17 foreign jurisdictions." Id. at Ex. 35 (emphasis added).

Thus, notwithstanding Abert's contention that [HN14]a Plaintiff's home choice of forum should be "given full weight," DiRienzo v. Philip Svcs. Corp., 232 F.3d at 62, 63 (2d Cir. 2000), the Court concludes that the private interest factors weigh so heavily in favor of the foreign forum that they overcome any presumption for Plaintiff's choice of forum. See Bybee v. Oper Der Standt Bonn, 899 F. Supp. 1217, 1224 (S.D.N.Y. 1995) (Stein, J.) (dismissing case to Germany even though "certain of the negotiations leading to the contract occurred in New York and [the plaintiff] is a New York resident."); see also Shields v. Mi Ryung Constr. Co., 508 F. Supp. 891, 895 n.4 (S.D.N.Y. 1981) (Cannella, J.) (requiring "plaintiff to accept the risks along with the possible benefits of pursuing business opportunities in a foreign country" where plaintiff "voluntarily involved himself" in business abroad).

3. "Public Interest" Factors

In Gulf Oil, [HN15]the U.S. Supreme Court identified four "public interest" factors to weigh: (1) the interest

in [*17] having localized controversies decided at home; (2) the burden of jury duty on citizens not interested in the controversy; (3) congestion of the courts' dockets; and (4) the need to apply foreign law. See Gulf Oil, 330 U.S. at 509. Moreover, Courts in this district have also considered the efficiency of combining related suits in a single forum. See Red Rock Holdings, Ltd. v. Union Bank Trust Co., Ltd., 1998 U.S. Dist. LEXIS 12383, 97 Civ. 5008 (JGK), 1998 WL 474094, at *9 (S.D.N.Y. Aug. 11, 1998).

The Agreement was made for the distribution and sale of Belgian goods which were packed for shipment in Belgium. Pursuant to the Agreement, the goods were to be shipped directly from Belgium to Central and South America. The invoices that were regularly used by the parties, on their face, reflect a Belgian origin, providing for, among other things, the currency to be in Belgian francs, **the laws of Belgium to govern any the agreements and contracts**, and that **any such disputes should be settled in the courts of Antwerp, Belgium**. See Decl. of Andrew Walker, Ex. C (sample invoices) ("**The Belgian Law rules our agreements and contracts. In cases of dispute, only the Courts of Antwerp [*18] are competent to note the dispute.**") (emphasis added). Moreover, the Agreement was allegedly breached by actions taken (predominantly) in Belgium.

[HN16]The fact that Abert is a New York corporation does not, by itself, vest this forum (and its jurors) with an interest in the litigation. See Bybee, 899 F. Supp. at 1223 (Stein, J.); see also Shields, 508 F. Supp. at 894 (Cannella, J.) ("To impose jury duty on the residents of this district would thus be unfair" where there is no local interest in the controversy); Krimizis v. Panoceanic Navigation Corp., 1985 U.S. Dist. LEXIS 13925, 83 Civ. 5667 (JFK), 1985 WL 3834, at *6 (S.D.N.Y. Nov. 14, 1985) ("the burden which would be placed on American jurors asked to sit on a case having no relation to their community" militates toward dismissal).

[HN17]It is well-recognized that the Southern District of New York is a congested district, see PT United Can Co., Ltd. v. Crown Cork & Seal Co., 1997 U.S. Dist. LEXIS 692, 96 Civ. 3669 (JGK), 1997 WL 31194, at *9 (S.D.N.Y. Jan. 28, 1997) (noting Gulf Oil's reference to the Southern District of New York as a burdened court), and there is a legitimate interest in ensuring that disputes with [*19] little connection to the district be litigated elsewhere. See Karlitz v. Regent Int'l Hotels, Ltd., 1997 U.S. Dist. LEXIS 2111, 95 Civ. 10136 (LAP), 1997 WL 88291, at *3 (S.D.N.Y. Feb. 28, 1997).

[HN18]With respect to whether foreign law will apply, "while the Court need not definitively resolve the

choice of law issue at this point, the likelihood that foreign law will apply weighs against retention of the action." Ioannides v. Marika Maritime Corp., 928 F. Supp. 374, 379 (S.D.N.Y. 1996) (Kaplan, J.). This Court applies the choice-of-law rules of the forum state -- New York. Klaxon Co. v. Stentor Elec. Mfg. Co., 313 U.S. 487, 496-97, 85 L. Ed. 1477, 61 S. Ct. 1020 (1941). Under New York law, in contract cases, the subject of the instant dispute, courts follow a "center of gravity" or "grouping of contacts" approach. Lazard Freres & Co. v. Protective Life Ins. Co., 108 F.3d 1531, 1539 (2d Cir.) cert. denied, 522 U.S. 864, 139 L. Ed. 2d 112, 118 S. Ct. 169 (1997). Among others, the factors considered are: the place of contracting, the places of negotiation and performance, the location of the subject matter, and the domicile or place [*20] of business of the contracting parties. Id. Here, both the final negotiations and the signing of the Agreement occurred in Belgium at Kipling's offices. n6 There is a real likelihood that Belgium law would apply to these causes of action. While the prospect of applying foreign law is not dispositive in favor of dismissal, see Manu Int'l. S.A. v. Avon Prods., Inc., 641 F.2d 62, 67-68 (2d Cir.1981), it is relevant, see Bybee, 899 F. Supp. at 1223.

----- Footnotes -----

n6 The Court also notes that Defendant alleges that a New York choice of law provision was specifically removed from the signed Agreement. See Decl. of Andrew Walker P 14. And, as discussed, the invoices clearly stated that the laws of Belgium apply to disputes about the agreements and contracts.

----- End Footnotes-----

A suit is currently pending (since August 2000), in Belgium covering essentially the same dispute between the parties. See Def. Stmt. Mat. Facts P 44. The interests of judicial economy would best be served by resolving issues in this [*21] case with the Belgian case. Red Rock Holdings, 1998 U.S. Dist. LEXIS 12383, 1998 WL 474094, at *9-10 (Koeltl, J.) (dismissing case where plaintiff filed its lawsuit in the Southern District of New York and defendant thereafter filed in Israel, because "Israel is plainly the most convenient forum and the forum where all the parties are already joined" and thus "consolidating the litigation would serve the interests of judicial economy").

Accordingly, the public interest factors weigh substantially in favor of a Belgian forum. The Court, therefore, exercises its discretion in favor of granting the motion on the basis of the doctrine of forum non conveniens. See Bybee, 899 F. Supp. at 1224.

IV. Conclusion

For the a forementioned reasons, the Court makes the following conclusions: (i) Defendant's motion for summary judgment to dismiss this case for lack of personal jurisdiction is denied; (ii) Defendant's motion for summary judgment to dismiss this case based on the doctrine of forum non conveniens is granted; and (iii) Defendant's motion for summary judgment to dismiss the complaint is denied as moot.

The Clerk of Court is respectfully requested to close this [*22] case.

Dated: New York, New York

February 26, 2002

RICHARD M. BERMAN, U.S.D.J.

ASTOR HOLDINGS, INC. f/k/a PROFILE RECORDS, INC. and ROBOT WARS LLC as Successor to ROBOT WARS, Plaintiffs, -v- EDWARD "TREY" ROSKI, III, and BATTLEBOTS, INC., Defendants.

01 Civ. 1905 (GEL)

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

2002 U.S. Dist. LEXIS 758

January 15, 2002, Decided
January 17, 2002, Filed

DISPOSITION: [*1] Defendants' motions to dismiss for lack of venue or to transfer venue denied. Defendants' motion to dismiss for failure to state a claim granted as to Count III and denied as to Counts I, II, and IV. Defendants' motion to strike Plaintiffs' request for compensatory damages denied, and motion to strike Plaintiffs' request for attorneys' fees granted.

CASE SUMMARY

PROCEDURAL POSTURE: Plaintiffs, capital provider and robotic combat business, sued defendants, robotic combat competitor and individual, for tortious interference, aiding and abetting a breach of fiduciary duty, and unjust enrichment. Defendants moved to dismiss for lack of venue or to transfer venue. Defendants moved to strike plaintiffs' requests for compensatory damages and attorneys' fees. Defendants also moved to dismiss for failure to state a claim.

OVERVIEW: The capital contributor and a co-owner entered into a venture agreement for the formation of the robotic combat business. The co-owner allegedly violated the agreement's non-compete clause by planning a competitive robotic combat event. After several phases of litigation, the co-owner filed for bankruptcy. The parties executed a bankruptcy settlement, but plaintiffs alleged that defendants attempted to undermine the settlement. Plaintiffs contended that defendants' competitive success was unjustly earned through defendants' surreptitious acts that caused the decline in plaintiffs' market position and goodwill. The court determined that venue was proper because a substantial part of defendants' actions giving rise to plaintiffs' claims were directed at New York events that comprised a substantial basis of plaintiffs' causes of action. Also, the factors relevant to venue were evenly balanced, so plaintiffs' choice of forum become the important consideration. Plaintiffs sufficiently alleged their tortious interference and aiding and abetting claims, but plaintiffs alleged no independent theory to justify the unjust enrichment claim.

OUTCOME: Defendants' motion to dismiss or transfer venue was denied. Defendants' motion to dismiss for failure to state a claim was granted as to the unjust enrichment claim, but the motion was denied as to the remaining claims. Defendants' motion to strike was granted as to attorney's fees and denied as to compensatory damages.

CORE TERMS: venue, venture, tortious interference, settlement, mediation, compensatory damages, giving rise, license, motion to dismiss, business relations, involvement, contractual, enrichment, interfered, substantial part, robot, robotic, motion to strike, omissions, tortious, adversary proceeding, settlement agreement, negotiation, competitor, trademark, breach of contract, cause of action, convenience, statute of limitations, fiduciary duty

LexisNexis(TM) Headnotes

Civil Procedure > Venue > Change of Venue in Federal Courts

[HN1]For the purposes of deciding a defendant's motion to dismiss for improper venue or, in the alternative, to transfer the case to another judicial district, the court must accept all of the uncontroverted allegations in the plaintiff's complaint as true and construe all reasonable inferences in the plaintiff's favor.

Civil Procedure > Venue > General Venue

[HN2]See 28 U.S.C.S. § 1391(a)(2).

Civil Procedure > Venue > General Venue

[HN3]The plaintiff bears the burden of establishing that venue is proper once an objection to venue has been raised and must demonstrate that venue is proper for each claim asserted in their complaint. To determine whether the plaintiff has satisfied its burden of proving venue under 28 U.S.C.S. § 1391(b), courts evaluate the defendant's actions as well as the nature of the dispute.

Civil Procedure > Venue > Change of Venue in Federal Courts

[HN4]The venue statute does not require venue in the district with the most substantial contacts to the dispute. Rather, it is sufficient that a substantial part of the events occurred in the challenged venue, even if a greater part of the events occurred elsewhere.

Civil Procedure > Venue > Change of Venue in Federal Courts

[HN5]Venue will usually exist where an act outside the district causes physical injury or other tortious effect inside the district. If, for example, a defendant by actions in California interfered with a business opportunity that existed in New York, the harm which the tort contemplates would occur here. But if the economic loss that resulted was inflicted on a corporation in Georgia, for example, that alone would not be sufficient for venue in Georgia, else plaintiffs could always sue in their home forum.

Civil Procedure > Venue > Change of Venue in Federal Courts

[HN6]While the locus of the harm suffered is a factor to consider, the case law does not support the theory that venue is proper on an economic-effects inquiry alone.

Civil Procedure > Venue > Change of Venue in Federal Courts

[HN7]See 28 U.S.C.S. § 1404(a).

Civil Procedure > Venue > Change of Venue in Federal Courts

[HN8]The determination whether to transfer on grounds of convenience is left to the broad discretion of the district court. The burden of showing the propriety of the transfer lies with the moving party, who must make a clear-cut showing that a transfer is in the best interests of the litigation.

Civil Procedure > Venue > Change of Venue in Federal Courts

[HN9]While there is no precise method to determine whether to transfer a case pursuant to 28 U.S.C.S. § 1404(a), courts are guided by a variety of factors, which include: (1) the convenience of witnesses; (2) the location of relevant documents and the relative ease of access to sources of proof; (3) the convenience of the parties; (4) the locus of the operative facts; (5) the availability of process to compel attendance of unwilling witnesses; (6) the relative means of the parties; (7) a forum's familiarity with the governing law; (8) the weight accorded a plaintiff's choice of forum; and (9) trial efficiency and the interests of

justice based on the totality of the circumstances. While courts are to consider the above factors, there is no rigid formula for balancing these factors and no single one of them is determinative. In addition, the court must defer to the plaintiff's choice of forum unless the balance of convenience and justice weigh heavily in favor of defendant's proposed forum.

Civil Procedure > Venue > Change of Venue in Federal Courts

[HN10]In the context of deciding proper venue, when weighing the convenience of the witnesses, courts must consider the materiality, nature and quality of each witness, not nearly the number of witnesses in each district.

Civil Procedure > Venue > Change of Venue in Federal Courts

[HN11]In deciding proper venue, the location of records is not a compelling consideration when records are easily portable.

Civil Procedure > Venue > Change of Venue in Federal Courts

[HN12]The "governing law" factor is to be accorded little weight on a motion to transfer venue because federal courts are deemed capable of applying the substantive law of other states.

Civil Procedure > Venue > Change of Venue in Federal Courts

[HN13]In deciding proper venue, the trial efficiency and interests of justice factor relates primarily to issues of judicial economy.

Civil Procedure > Venue > Change of Venue in Federal Courts

[HN14]A plaintiff's choice of forum is entitled to great deference when the plaintiff has sued in the plaintiff's home forum. Further, venue should not be transferred under 28 U.S.C.S. § 1404(a) where the result is merely to shift the inconvenience to plaintiff.

Civil Procedure > Pleading & Practice > Defenses, Objections & Demurrers > Failure to State a Cause of Action

[HN15]On a motion to dismiss under Fed. R. Civ. P. 12(b)(6), the court must accept as true the factual allegations in the complaint, and draw all reasonable inferences in favor of the plaintiff. The court must limit itself to facts stated in the complaint, including documents attached to or incorporated by the complaint. The court should grant the motion only if, after viewing plaintiff's allegations in this favorable light, it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which

would entitle him to relief. The court's role on a Rule 12(b)(6) motion is merely to assess the legal feasibility of the complaint, not to assay the weight of the evidence which might be offered in support thereof. While the pleading standard is liberal, bald assertions and conclusions of law are insufficient.

Torts > Procedure > Statutes of Limitations

[HN16]New York has a three-year statute of limitations for tort claims. N.Y. C.P.L.R. 214(4).

Torts > Procedure > Statutes of Limitations

[HN17]For New York tort claims, the federal court considers New York's doctrine of equitable estoppel, which is similar, but not identical, to the federal doctrine of equitable tolling. Equitable estoppel prevents a defendant from pleading the statute of limitations if the plaintiff refrained from filing a timely action because of the defendant's affirmative acts of misrepresentation or concealment. Plaintiffs must also demonstrate that they exercised due diligence in bringing the cause of action and reasonable care in ascertaining facts which might have led to discovery of their claim.

Torts > Business & Employment Torts > Interference With a Contract

[HN18]To state a claim for tortious interference with contract under New York law, a plaintiff must allege (1) the existence of a valid contract between itself and a third party; (2) defendant's knowledge of that contract; (3) defendant's intentional procuring of a breach; and (4) damages. There is also a causation burden on the plaintiff, who must assert that defendant's actions were the "but for" cause of the alleged breach of contract -- in other words, that there would not have been a breach but for the defendant's activities. Lastly, the pleadings must have some factual specificity to state a claim for tortious interference; conclusory assertions are not sufficient.

Governments > Legislation > Statutes of Limitations > Equitable Estoppel

[HN19]Principles of equitable estoppel require that a statute of limitations does not run against a plaintiff who is unaware of his cause of action.

Business & Corporate Entities > Agency > Causes of Action & Remedies > Breach of Fiduciary Responsibility

[HN20]To state a claim for aiding and abetting a breach of fiduciary duty under New York law, a plaintiff must allege (1) a breach by a fiduciary of obligations to another, and (2) that the defendant knowingly induced or participated in the breach.

Contracts Law > Types of Contracts > Implied-in-Law Contracts

[HN21]Unjust enrichment is best understood as a general principle, straddling the division between contract and tort, that underlies various legal doctrines and remedies, rather than as a single well-defined cause of action. In essence, it is an action for restitution or on quasi contract, and the existence of a valid and enforceable written contract governing a particular subject matter ordinarily precludes recovery in quasi contract for events arising out of the same subject matter. Unjust enrichment is not an appropriate remedy for fruitless negotiation, frustration or disappointed expectations.

Contracts Law > Types of Contracts > Implied-in-Law Contracts

[HN22]To state a claim for unjust enrichment in New York, a plaintiff must allege that (1) defendant was enriched; (2) the enrichment was at plaintiff's expense; and (3) the circumstances were such that equity and good conscience require defendants to make restitution.

Torts > Business & Employment Torts > Interference With Prospective Advantage

[HN23]The tort of interference with potential contractual relations consists of an intentional and improper interference with another's prospective contract. To sustain its claim for tortious interference with prospective economic advantage, a plaintiff must satisfy an extremely high pleading standard with allegations that include elements more demanding than those for interference with the performance of an existing contract. To state a prima facie case under New York law, the plaintiff must establish (1) business relations with a third party; (2) the defendant's interference with those business relations; (3) that the defendant acted with the sole purpose of harming the plaintiff or used dishonest, unfair, or improper means; and (4) injury to the business relationship.

Torts > Business & Employment Torts > Interference With Prospective Advantage

[HN24]In the very nature of the tort of interference with potential contractual relations, an existing contract is not required to state a claim for tortious interference with prospective business relations. However, there is a threshold requirement that a plaintiff must specify some particular, existing business relationship through which plaintiff would have done business but for the allegedly tortious behavior.

Torts > Business & Employment Torts > Interference With Prospective Advantage

[HN25] Even if the requirement of existing business relations is met, in order to state a claim for tortious interference with prospective business relations, plaintiffs must allege either (1) that defendants' sole purpose was to harm the plaintiffs, or (2) that defendants employed wrongful means in their interference.

Torts > Business & Employment Torts > Interference With Prospective Advantage

[HN26] A defendant's status as a competitor may excuse him from the consequences of interference with prospective contractual relationships, where the interference is intended at least in part to advance the competing interest of the interferer, no unlawful restraint of trade is effected, and the means employed are not wrongful. Hence, one who intentionally causes a third party not to enter into a prospective contract with his competitor does not interfere improperly with the other's relation if his purpose is at least in part to advance the interest of competing with the other.

Torts > Business & Employment Torts > Interference With Prospective Advantage

[HN27] Where the plaintiffs and defendants are economic competitors, the actions alleged for the claim of tortious interference with prospective business relations can only be tortious if defendants used dishonest, unfair, or improper means (collectively called "wrongful means"), to interfere with plaintiffs' potential contractual relations. Wrongful means include physical violence, fraud, misrepresentation, civil suits, criminal prosecutions and some degree of economic pressure, but more than simple persuasion is required.

Civil Procedure > Preclusion & Effect of Judgments > Res Judicata

[HN28] When deciding whether the doctrine of res judicata bars a subsequent action, the court must consider whether (1) the prior decision was a final judgment on the merits, (2) the litigants were the same parties, (3) the prior court was of competent jurisdiction, and (4) the causes of action were the same.

Torts > Multiple Defendants

[HN29] While multiple parties may be liable to plaintiffs for the same injury, satisfaction of only one judgment for that injury may be collected.

Civil Procedure > Costs & Attorney Fees > Attorney Fees

[HN30] Under New York law, attorneys' fees are not recoverable by prevailing parties absent express statutory or contractual authority or court rule.

COUNSEL: Fran M. Jacobs, Duane Morris & Heckscher, Kurt Hunciker, of counsel, New York, New York, for Astor Holdings, Inc. and Robot Wars LLC., Plaintiffs.

Daniel S. Schecter, Latham & Watkins, James S. Blank, Belinda S. Lee, Heather L. Mayer and Tehmina Jaffer, of counsel, Los Angeles, California, for Edward "Trey" Roski, III and BattleBots, Inc., Defendants.

JUDGES: Gerard E. Lynch, United States District Judge.

OPINIONBY: Gerard E. Lynch

OPINION: OPINION AND ORDER

GERARD E. LYNCH, District Judge:

In this latest incarnation of a protracted litigation battle that has continued on both coasts of the United States over the past several years, Plaintiffs Astor Holdings, Inc. ("Astor"), formerly known as Profile Records, Inc. ("Profile"), and Robot Wars LLC ("Robot Wars") (collectively, "Plaintiffs") have brought suit in this district against Edward [*2] "Trey" Roski III, and BattleBots, Inc. ("BattleBots") (collectively, "Defendants"). Plaintiffs allege in their complaint that Defendants tortiously interfered with efforts to resolve prior litigation related to the instant action and wrongfully prevented them from entering into various commercial agreements related to their burgeoning business of robotic combat events.

On May 1, 2001, Defendants moved to dismiss this action for improper venue, pursuant to 28 U.S.C. § 1406 and Fed. R. Civ. P. 12(b)(3), or, alternatively, for failure to state a claim, pursuant to Fed. R. Civ. P. 12(b)(6). Following oral argument on June 21, 2001, Defendants also moved to transfer the action to the United States District Court for the Northern District of California, pursuant to 28 U.S.C. § 1404. Finally, Defendants move to strike portions of the complaint pursuant to Fed. R. Civ. P. 12(f). For the reasons that follow, Defendants' motion to dismiss or transfer venue will be denied, the motion to dismiss for failure to state a claim will be granted as to Count III and denied as to Counts I, II and IV, and the motion to strike will be granted as to attorney's [*3] fees and denied as to compensatory damages.

BACKGROUND

The parties' dispute involves the industry of robotic combat events, spectacles in which robots fight to the death with various tools of battle like post-modern gladiators. Given the long and convoluted history between the parties, it is necessary to recite at some

length -- both for contextual and venue purposes -- facts concerning the formation of the Robot Wars venture, the parties' prior litigations in this district and the Northern District of California, and the events that led to Plaintiffs' commencing the current action. The facts below are drawn primarily from the Plaintiffs' complaint, which must be taken as true at this stage of the litigation.

The Formation of Robot Wars

In 1994, Profile Records, Inc. ("Profile"), a New York corporation with its principal place of business in this state (Compl. P 1), entered into a joint venture ("the Venture") named "Robot Wars" with Marc Thorpe, a California resident. Profile and Thorpe, which held equal shares of the Venture (Id. P 2), contemplated that Robot Wars would promote itself by staging live combat events that, among other things, could be used as a [*4] vehicle for licensing the Robot Wars trademark. (Id. P 10.) Profile advanced approximately \$ 400,000 in start-up capital; Thorpe, who had originated the idea and "took center stage at the live events," contributed no financing. (Id. PP 14, 16.)

Concomitant to the formation of the Venture, Thorpe and Profile executed a Venture Agreement on July 22, 1994. The agreement specified, among other things, that Thorpe was precluded from "negotiating, seeking to enter into, or entering into any other agreement with respect to matters within the scope of the Venture or becoming involved in any capacity in any other project relating to robots or robotic combat." (Id. P 12.) The Venture Agreement specifies that it is to be governed by New York law, and contains a forum-selection clause specifying that any litigation arising out of its interpretation must be commenced in this state. (Plotnicki Aff. Ex. B at 7.) The parties contemplated that they would later execute more formal corporate documents, such as a shareholders' agreement, in connection with the Venture Agreement. Profile prepared the documents, but Thorpe, for reasons unclear, "declined to sign them." (Id. P 14.)

From [*5] 1994 to 1996, Robot Wars expanded its competitions to the point where "it created a recognizable name and market for robotic entertainment." As the company grew, Thorpe became its public face among robot manufacturers, who regarded him as the "father of robotic competition," while Profile provided Robot Wars with financing and managed its daily operations. (Id. P 16.) Despite its increasing success -- and the apparent interest of prospective licensees -- the company did not turn a profit during that time period. (Id. P 15.)

Thorpe's Purported Breach of the Venture Agreement and Related Litigation

In July 1997, Profile learned that Thorpe had hatched surreptitious plans to conduct a new event called "Robot Wars '97," which was supposedly to be funded by Robert Leppo, a California resident who is currently a co-owner of Defendant BattleBots, a California corporation with its principal place of business in California. (Id. P 17.) This putative event violated the terms of the non-compete clause of the Venture Agreement, which prohibited Thorpe from conducting robot competitions independent of his joint venture with Profile. Leppo, aware of Thorpe's contractual restrictions, [*6] retained counsel to assist Thorpe with the legal implications of his breach of the Venture Agreement. (Id. PP 17-18.)

Subsequently, Profile informed Thorpe that his decision to hold Robot Wars '97 violated the Venture Agreement. Thorpe and Leppo ignored Profile's cease-and-desist efforts, and subsequently sent a new e-mail to "all Robot Wars supporters," ostensibly in an effort to promote the rival competition. (Id. P 19.)

In response to Thorpe and Leppo's actions, Profile commenced an action against Thorpe in this district on July 25, 1997, which was assigned to Judge Deborah A. Batts. The complaint alleged, among other things, that Thorpe had breached the Venture Agreement and infringed the Robot Wars trademark. Shortly thereafter, at Judge Batts' urging, the parties reached a settlement, memorialized on the record in open court, which specified, in part, that the Venture Agreement was to be "converted into a limited liability company operating agreement," and the new entity would then repay Profile the various cash advances it had made since the inception of the Robot Wars venture. (Id. PP 21-22.) The agreement also permitted Thorpe to conduct Robot Wars '97.

[*7] The Settlement Unravels

Following Robot Wars '97, Thorpe contacted Profile in an effort to split the new limited liability company into two separate divisions -- a United States unit, which would be controlled by Thorpe, and an international unit, which would be held by Profile. Unbeknownst to Profile, Thorpe had purportedly entered into side-discussions with Leppo and Defendant Edward "Trey" Roski III, a resident of California. (Id. P 3.) At a time uncertain, Thorpe and Roski then created what Plaintiffs term an "Entity-in-Formation," which was to compete directly with Robot Wars. (Id. P 32.)

Profile considered Thorpe's actions to be in derogation of the parties' August 6, 1997, settlement agreement, and it sought permission from Judge Batts to move for

an order requiring Thorpe to perform the agreement. By order dated October 3, 1997, Judge Batts directed Profile and Thorpe to engage in mediation in an effort to secure the parties' compliance with the terms of the settlement agreement. (Id. P 26.)

During the subsequent mediation, which was conducted in New York City, the parties reached a tentative agreement, pursuant to which Thorpe agreed to sell his half-share [*8] in the limited liability company to Profile, which in turn licensed Thorpe to conduct various robotic competitions with the Robot Wars trademark. However, after Profile's attorneys memorialized the settlement terms and presented them to Thorpe, he refused to execute the documentation and requested that he receive an interim license to conduct "Robot Wars '98" while he was still reviewing the settlement terms that had been presented to him. Profile declined, and Thorpe then moved on March 6, 1998, before Judge Batts for an injunction to compel Profile to grant the license. Judge Batts denied the motion on February 25, 1998, and directed the parties to appear at a subsequent conference in yet another effort to resolve their disputes. (Id. PP 27-30.)

On March 5, 1998, the day before Thorpe and Profile were scheduled to conduct yet another mediation session in New York City, Thorpe informed his adversary that an attorney from Latham & Watkins would be attending. Unbeknownst to Profile, Roski (and, apparently, the Entity-in-Formation) had retained the attorney to monitor the subsequent mediation and, ostensibly, advise him as to how Thorpe could best attempt to dissolve his relationship [*9] with Profile. (Id. P 34.)

Immediately following the session, Roski conferred with the attorney. Following those discussions, Roski advised Thorpe that he should not settle with Profile under the terms that Thorpe had previously assented to in October 1997. Thorpe, convinced by Roski's reasoning and knowing that Roski would support him financially in any subsequent litigation with Profile, then informed Profile that he would not settle. (Id. P 35.)

Subsequently, Roski's attorneys informed Thorpe that if he were interested in developing the Entity-in-Formation, he would have to terminate the business arrangement with Profile. Thorpe acceded to the attorneys' advice. (Id. PP 36-37.) Then, following various telephonic conversations with Roski, Thorpe sent an e-mail on March 20, 1998, to all robot makers and fans on the Venture's mailing list, which referenced his dispute with Profile and noted that Thorpe "had worked too hard and too long and at far too much personal sacrifice to be bullied into submission by a wealthy businessman and his clever

attorneys." (Id. PP 37-38.) At least one of the recipients of the e-mail resided in this district. (June 21, 2001 Tr. at 23.) [*10]

Around that time, Roski and his attorneys allegedly devised a scheme to free Thorpe from the constraints that the Venture Agreement imposed on him by either buying out his half-share in the Venture or convincing Thorpe to file for bankruptcy. Profile contends that as a result of these discussions between Thorpe and Roski, Thorpe was precluded from engaging in any further Venture-related business, which made it impossible for the Venture to conduct operations in the early portion of 1998. (Id. PP 39-40.)

Thorpe's Bankruptcy Filing

As of May 13, 1998, Thorpe had less than \$ 100,000 of debt, which he was capable of paying off as it became due. On that day, Thorpe borrowed \$ 150,000 from Roski, solely to make Thorpe eligible to file a federal bankruptcy petition. Thorpe then used the loan proceeds, which he secured with his half-interest in the Venture, to retain bankruptcy counsel, who had been selected for him by Roski. (Id. PP 41-42.) On May 27, 1998, Thorpe filed a Chapter 11 petition in the United States Bankruptcy Court for the Northern District of California. Thorpe, acting on the advice of his bankruptcy counsel, then notified Profile that he would be rejecting [*11] the Venture Agreement. Subsequently, he also refused to participate in the Venture's business operations, thereby immobilizing Robot Wars.

Additionally, Plaintiffs claim that Thorpe took affirmative steps to hurt Robot Wars' potential business. For example, on July 13, 1998, Thorpe's bankruptcy counsel, through a cease-and-desist letter notified Mentorn Films Group ("Mentorn"), a Robot Wars licensee, that Thorpe owned Robot Wars' trademark rights. Profile contends that as a consequence of Thorpe's actions toward Mentorn -- and, apparently, other potential licensees -- Robot Wars lost an unspecified amount of prospective business. (Id. PP 43-47.) Thorpe also allegedly failed to inform Profile in June 1998 that David Letterman was interested in running a "segment on Robot Wars" during his late-night talk show on CBS, which is produced in this district. (Id. P 48.) Moreover, Thorpe failed to prevent two of his acquaintances from using the Robot Wars trademark without authorization, thus diluting the mark's value. (Id. PP 49-50.)

Profile subsequently moved in the Bankruptcy Court to dismiss Thorpe's petition on the theory that he had filed it in bad faith. It also sought [*12] to lift the automatic bankruptcy stay on other litigation so that it

could seek a ruling from Judge Batts concerning whether Thorpe was bound by the terms of the August 6, 1997, settlement. On July 30, 1998, the Bankruptcy Court granted Profile relief from the terms of automatic stay, but delayed the order's effect for ninety days to allow Thorpe to develop a reorganization plan. (Id. P 52.) The motion to dismiss the bankruptcy petition for bad faith was deferred pending submission of Thorpe reorganization plan. (Id. P 52.)

The Bankruptcy Settlement Negotiations

Shortly after the stay was lifted, Thorpe's bankruptcy counsel circulated a draft reorganization plan for his client to one of Roski's attorneys at Latham & Watkins. The plan apparently contemplated that Roski would acquire Thorpe's interest in the Venture and hire Thorpe as an officer to work for the new entity. To facilitate Roski's prospective purchase, Thorpe's draft specified that Roski would be entitled to match any offer made to Thorpe by a third-party, and would have an opportunity to purchase the Robot Wars trademark - although the mark was allegedly owned by the Venture. Profile renewed its objection [*13] to the plan on the grounds that Thorpe's Chapter 11 filing had been made in bad faith. (Compl. PP 53-56.) This motion was ultimately never heard by the Bankruptcy Court, as the parties continued to negotiate terms for the dissolution of the Venture, terms that apparently conflicted with those embodied in Thorpe's draft reorganization plan. (Id.) For instance, Thorpe insisted that Profile purchase his half-share and grant him a license to conduct Robot Wars competitions in the United States while the plan contemplated that Roski would acquire this interest. (Id. P 56.)

Following an unsuccessful settlement conference before the Bankruptcy Court on December 3, 1998, Roski retained Frederick Fierst to advise Thorpe in connection with licensing issues related to the negotiations. Profile objected to Fierst's disclosing information about the negotiations to Roski, but Fierst nevertheless remained in regular communication with him. Thorpe himself also continued to consult directly with Roski and Leppo. (Id. PP 57-58.)

Profile informed Fierst, as Thorpe's attorney, that it would be willing to release any claims it had against Thorpe, provided that he "help to promote and rehabilitate [*14] the Venture and Profile's reputation." (Id. P 59.) Following further negotiations, Fierst presented Profile with a proposed agreement under which Thorpe would receive \$ 250,000 for his half-share of the Venture, a license to stage a Robot Wars competition in San Francisco, and various other inducements and benefits. Profile signed the

agreement, but Thorpe -- as had become customary -- declined to do so. (Id. PP 60-63.)

On January 24, 1999, Thorpe, following further consultations with Roski and his attorneys, submitted yet another settlement term sheet to Profile. The sheet provided that in exchange for a mutual release of any claims that Thorpe and Profile may have had against one another, Thorpe would receive, among other things, \$ 250,000 for his half-share of the Venture and a royalty from Robot Wars contingent on its future receipts. (Id. PP 65-69.) Thorpe would also "disclose potential competitors to Profile," and enter into a five-year non-compete agreement with Robot Wars. (Id. P 69.) On or about February 2, 1999, both parties executed the agreement and submitted it to the Bankruptcy Court for final approval ("the Bankruptcy Settlement"). (Id. PP 68, 71.) [*15] The Bankruptcy Court approved the settlement on March 5, 1999. (Id. P 75.)

Roski's Purported Efforts to Undermine the Bankruptcy Settlement

Shortly after the parties reached the settlement, Roski obtained a copy of the settlement agreement from either Thorpe or his counsel. He then disseminated the information to a robot maker, who posted an item on an unspecified website entitled "Which of You Would Be a Prostitute," opining that Thorpe was "prostituting" himself to Profile by agreeing to the settlement. (Id. P 72.) Following the settlement, Roski and BattleBots, although aware of the settlement terms, encouraged Thorpe not to publicly support Robot Wars as the settlement required, and Thorpe effectively did not extend his support. (Id. P 78-79.)

A Competitor Emerges

On March 10, 1999, Roski and Leppo unveiled BattleBots, a similar robotic combat event to take place one week before the planned Robot Wars '99. (Id. P 80.) Plaintiffs contend that during the month of February, when BattleBots filed its Articles of Incorporation, Thorpe had approximately three dozen conversations with Roski. (Id. P 81.) They further allege that Thorpe was secretly [*16] on Leppo's payroll, with Roski promising to indemnify Leppo for any claims asserted against him in connection with BattleBots (id. PP 82-84), and that Thorpe made damaging public statements on the internet about Profile and Steven Plotnicki, Profile's principal, in violation of the Bankruptcy Settlement (id. P 85). Finally, on March 15, 1999, Profile notified Thorpe that he had breached the Bankruptcy Settlement and invoked the mediation procedure provided for by the

Settlement. (Id. P 87.) During this period, Plaintiffs allege that Roski and BattleBots were pursuing opportunities that Thorpe had told them had been offered to Robot Wars, including holding a meeting with TalentWorks, a television company that had previously "approached Robot Wars." (Id. P 90.)

Defendants assertedly benefitted from Thorpe's refusal to promote Robot Wars. Plaintiffs charge that 38 "key competitors" from past Robot Wars events signed up for BattleBots instead of Robot Wars in 1999 and, likewise, that BattleBots was able to avoid the start-up costs of a robotic combat business. (Id. PP 99-100.) Robot Wars '99, without enough warriors to hold a profitable event, was canceled, while the [*17] first BattleBots event attracted approximately 70 teams of robot makers and has since climbed to profitable new heights, within three months attracting "enough quality robot makers to create a television series." (Id. P 100-101.) Plaintiffs contend that BattleBots' success was unjustly earned through the Defendants' calculated and surreptitious acts that caused the decline in Robot Wars' market position and goodwill. (Id. PP 123-126.)

Further Litigation in this Court

Approximately a month later, Robot Wars filed another complaint in this district, Robot Wars v. Roski, III, Roski, Jr., and BattleBots, 51 F. Supp. 2d 491, 1999 U.S. Dist. LEXIS 9032, No. 99 Civ. 2953 (S.D.N.Y. filed 1999), alleging unfair competition, tortious interference with business and contractual relations, tortious interference with economic advantage, and trade dress infringement against Roski and BattleBots for largely the same activity that forms the material part of the instant complaint. (Defs.' Ex. D at 41-46.) On June 30, 1999, Judge Jed S. Rakoff approved Plaintiffs' voluntarily dismissal of the claim without prejudice. (Defs.' Ex. F.)

Further Bankruptcy Litigation

Back in the Northern District of California, [*18] the Bankruptcy Court ruled on August 8, 2000, that Thorpe had breached the Bankruptcy Settlement and ordered Thorpe to fulfill the provisions of the settlement agreement that required him to promote Robot Wars. (Defs.' Ex. H at 3-4.) Claims of a Roski-Thorpe conspiracy were presented to the Bankruptcy Court by Profile in the determination of Thorpe's liability. Roski's and BattleBots' liability, however, were not considered in this action. Profile appealed the Bankruptcy Court's order to the District Court, which affirmed in part and remanded solely as to the calculation of damages. (Pls.' Ex. A at 19.)

Thorpe subsequently brought an adversary proceeding against Profile in the Bankruptcy Court, claiming that Profile had violated the Bankruptcy Court's discharge injunction by not discontinuing another suit Profile had filed against Thorpe in this district, Robot Wars v. Marc Thorpe, No. 01 Civ. 3195 (S.D.N.Y. filed Apr. 16, 2001), that has been consolidated with the instant action. (Defs.' Ex. K.) The Bankruptcy Court entered a preliminary injunction on May 24, 2001, enjoining Profile from prosecuting that action against Thorpe pending trial in the adversary proceeding. (Defs. [*19] ' Ex. N at 1-2.) To the Court's knowledge, that trial is still pending.

The Instant Litigation

On March 5, 2001, Plaintiffs filed the complaint in this action. Plaintiffs present four separate claims, charging that: (1) Defendants tortiously interfered with Profile's contracts with Thorpe;

(2) Defendants aided and abetted Thorpe's breach of a fiduciary duty he owed to Plaintiffs;

(3) Defendants were unjustly enriched when they acquired a portion of the Robot Wars business for themselves; and

(4) Defendants tortiously interfered with Robot Wars' prospective business relations. n1

----- Footnotes -----

n1 The first and fourth claims were previously before Judge Rakoff in this district, but were voluntarily dismissed without prejudice. (Defs.' Ex. F.)

----- End Footnotes -----

DISCUSSION

I. Venue Issues

[HN1] For the purposes of deciding Defendants' motion to dismiss for improper venue or, in the alternative, to transfer the case to another judicial district, the Court must accept all of the uncontroverted allegations [*20] in Plaintiffs' complaint as true and construe all reasonable inferences in plaintiffs' favor. Dolson v. New York State Thruway Auth., 2001 U.S. Dist. LEXIS 4283, 2001 WL 363032 at *1 (S.D.N.Y. 2001) (citation omitted).

A. Improper Venue: Rule 12(b)(3) and § 1406(a)

Defendants maintain that pursuant to 28 U.S.C. § 1406(a), Plaintiffs' claims should be dismissed because (1) all Defendants do not reside in the state of New York (28 U.S.C. § 1391(a)(1)); (2) no "substantial part of the events of omissions giving rise to the claim" occurred in New York (§ 1391(a)(2)); and (3) this action can be (and should have been) brought in the Northern District of California (§ 1391(a)(3)). (Defs.' Br. at 9.) Plaintiffs maintain that their claims have a substantial connection to New York, and hence, that venue is proper in this district under § 1391(a)(2). n2

----- Footnotes -----

n2 28 U.S.C. § 1391(a)(2), provides in relevant part:[HN2]

A civil action wherein jurisdiction is founded only on diversity of citizenship may, except as otherwise provided by law, be brought only in . . . (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred . . .

----- End Footnotes -----

[*21]

The crux of the venue issue, therefore, is whether Plaintiffs can demonstrate that a substantial part of the events or omissions giving rise to the claim occurred in New York. Defendants argue that the events or omissions giving rise to the claim "all occurred in California, not New York." (Defs.' Br. 8-9.)

Although there may have been initial confusion as to the proper interpretation of the 1990 amended version of the venue statute, courts are now settled in their method of application. [HN3]The Plaintiff bears the burden of establishing that venue is proper once an objection to venue has been raised, D'Anton Jos, S.L. v. Doll Factory, Inc., 937 F. Supp. 320, 321 (S.D.N.Y. 1996), and must demonstrate that venue is proper for each claim asserted in their complaint. See Saferstein v. Paul Mardinly, Durham, James, Flandreau & Rodger, P.C., 927 F. Supp. 731, 736 (S.D.N.Y. 1996); Wright, Miller & Cooper, Federal Practice and Procedure: Jurisdiction 2d § 3808. To determine whether Plaintiffs have satisfied their burden of proving venue under § 1391(b), courts evaluate Defendants' actions as well as the nature of the dispute. See Friedman v. Revenue Mgmt. of New York, Inc., 38 F.3d 668, 672 (2d Cir. 1994) [*22] (affirming transfer of venue to district where a substantial part of Defendant's alleged actions occurred); I.M.D. USA, Inc. v. Shalit, 92 F. Supp. 2d 315, 318 (S.D.N.Y. 2000) ("The fact that the events and omissions most closely

related to the alleged breach . . . unmistakably occurred in South Carolina is material, as the focus under Section 1391(a)(2) is on the activities of the defendant, not the plaintiff.")

[HN4]The venue statute, furthermore, does not require venue in the district with the most substantial contacts to the dispute. Rather, it is sufficient that a substantial part of the events occurred in the challenged venue, even if a greater part of the events occurred elsewhere. See David D. Siegel, Commentary on 1990 Revision of Subdivisions (a), (b), and (e) at 4, 28 U.S.C.A. § 1391 (Supp. 1993); Bates v. C&S Adjusters, Inc., 980 F.2d 865 (2d Cir. 1992). The current venue standard, thus, acknowledges the more porous borders of the electronic age, where events can be influenced anywhere in the world by fax, phone and keystroke, and recognizes that a person acting predominantly in one state can easily cause his or her [*23] acts to have effects outside the borders of that state. Therefore, to show that venue lies in the Southern District of New York, Astor Holdings and Robot Wars bear the burden of establishing only that a substantial part of Roski's and BattleBots' actions or omissions giving rise to this lawsuit occurred in this district for each of the counts raised.

Plaintiffs contend that the Court can find venue solely because "plaintiffs were injured in New York." (Pl's. Br. at 5.) While it is true that the place where harm of a tort occurs is "relevant for venue purposes," New York Mercantile Exch. v. Central Tours, Inc., 1997 U.S. Dist. LEXIS 9242, at *13 (S.D.N.Y. June 30, 1997), Plaintiffs' contention overstates the breadth of the law of venue. In this case, when Plaintiffs speak of the harm caused by the tort, they mean solely the place where the economic effect of the tort was felt, in other words, the Plaintiffs' place of business. If this were enough to confer venue, then the plaintiff's residence would always be a proper venue in tort cases, or at least in cases of business torts. But this is conspicuously not what Congress has provided in § 1391(a). [HN5]Venue will usually [*24] exist where an act outside the district causes physical injury or other tortious effect inside the district. If, for example, a defendant by actions in California interfered with a business opportunity that existed in New York, the harm which the tort contemplates would occur here. But if the economic loss that resulted was inflicted on a corporation in Georgia, for example, that alone would not be sufficient for venue in Georgia, else plaintiffs could always sue in their home forum.

The only case cited that directly supports Plaintiffs' argument that a court may find venue proper under 28 U.S.C. § 1391(a)(2) based solely on the situs of the economic harm is Reynolds Corp. v. National Operator

Services, Inc., 73 F. Supp. 2d 299 (W.D.N.Y. 1999).
n3 The other cases cited by Plaintiffs to support an effects-only inquiry are inapposite. Unlike the claims here, the cases cited: (1) concern motions to transfer from a district where venue had already been found proper n4; (2) contain analyses for personal jurisdiction purposes of defendants' forum-related contacts, an inquiry that is distinct from a determination as to whether venue lies; n5 (3) involve [*25] fact patterns in which the quantum of defendants' activities in the district in question was relatively greater than that alleged in the present action; n6 or (4) do not even discuss venue or are cited out of context. n7 There is an obvious potential for unbounded venue if the courts were to find venue regardless of where the acts occurred, based solely on the existence of economic harm felt in the district where the plaintiff resides or is headquartered. Therefore, [HN6]while the locus of the harm suffered is a factor to consider, the case law does not support the theory that venue is proper on an economic-effects inquiry alone, and this Court respectfully declines to follow such limited non-binding authority as appears to take that view.

----- Footnotes -----

n3 The Reynolds court cited to Rothstein v. Carriere, 41 F. Supp. 2d 381, 387 (E.D.N.Y. 1999), to support this effects-only test for venue. However, in Rothstein, Judge Gershon noted that "the place where the harm occurred . . . [is] . . . relevant for venue inquiry," but not determinative and, further, that "all of the events regarding plaintiff transpired in the forum district. Id.

[*26]

n4 CAT Internet Servs. v. Magazines.com, Inc., 2001 U.S. Dist. LEXIS 8, at *22 (E.D. Pa. Jan. 4, 2001).

n5 Levisohn, Lerner, Berger & Langsam v. Medical Taping Sys., 10 F. Supp. 2d 334, 343 (S.D.N.Y. 1998); National Westminster Bank PLC v. Retirement Care Assocs., Inc., 1999 U.S. Dist. LEXIS 5807, at *8 (S.D.N.Y. Apr. 22, 1999).

n6 Neufeld v. Neufeld, 910 F. Supp. 977, 986 (S.D.N.Y. 1996); New York Mercantile Exch. v. Central Tours Int'l, Inc., 1997 U.S. Dist. LEXIS 9242, at *13 (S.D.N.Y. June 30, 1997).

n7 Lewis v. Rosenfeld, 138 F. Supp. 2d 466, 2001 U.S. Dist. LEXIS 2313, at *14 (S.D.N.Y. 2001); Bank Brussels Lambert v. Credit Lyonnais (Suisse) S.A., 2001 U.S. Dist. LEXIS 5880, at *11 (S.D.N.Y. May 8, 2001); J.C. Whitney & Co. v. Renaissance Software Corp., 2000 U.S. Dist. LEXIS 6180, at *64 (N.D. Ill. Apr. 19, 2000). Kirkpatrick v. Rays Group, 71 F. Supp. 2d 204, 212 (W.D.N.Y. 1999); Bates v. C&S Adjusters, Inc., 980 F.2d 865, 868 (2d Cir. 1992).

----- End Footnotes -----

[*27]

But while Plaintiffs are wrong that the situs of economic injury is, without more, a place where "a substantial part of the events or omissions giving rise to the claim occurred," they are nevertheless correct that on the facts of this case, this district is an appropriate venue under the statute.

1. Tortious interference with contract

Under § 1391(a)(2), Plaintiffs may litigate the tortious interference of contract claim in this district, because the complaint demonstrates that a substantial part of the events giving rise to this claim occurred here.

Because the claim requires a preexisting contract, the Court first looks to the contracts at issue. There are two contracts to consider: the Venture Agreement and the Bankruptcy Settlement. Plaintiffs claim that Defendants caused Thorpe to breach the Venture Agreement in various ways. (Compl. P 111(a), (b), (c).) It is undisputed that the Venture Agreement was a New York contract to be performed in New York and governed by New York law, as provided by a forum selection clause in the Agreement. (Plotnicki Aff. at 7.) Plaintiffs also allege that Defendants induced Thorpe to breach the Bankruptcy Settlement between himself and the [*28] Plaintiffs. (Id. P 111(e).) Although the bankruptcy itself took place in the Northern District of California, the Bankruptcy Settlement Agreement specifically states that the contract "may be enforced in the courts of California and New York," and called for Thorpe to provide information to Profile, which is located in New York, as well as to "promote the [Robot Wars] property." (Defs.' Ex. F at 3, 5-6.) While many of the actions giving rise to this claim occurred in California (Defs.' Br. at 11-12), the complaint alleges that these actions were directed at interfering with contracts that had substantial connections to New York.

Thus, substantial events giving rise to the alleged tortious interference of contract occurred in this district and venue is proper here.

2. Aiding and abetting breach of fiduciary duty

Venue in this district is also proper under § 1391(a)(2) for the second claim, aiding and abetting a breach of fiduciary duty. Plaintiffs allege that "knowing that Thorpe owed fiduciary obligations to plaintiffs, defendants deliberately induced Thorpe to breach such obligations and gave substantial assistance and encouragement to him in breaching such obligations. [*29] " (Compl. P 118.) Specifically, Plaintiffs assert that Roski, "through his attorney, covertly participated in the March 6, 1998, mediation session between Thorpe and Profile" in New York to prevent the New York lawsuit from settling. (Id. PP 34-36). They further contend that on March 29, 1999, Roski's father was in New York on behalf of BattleBots, where he attended a meeting with TalentWorks, "a television company which had approached Robot Wars" via Thorpe, who then relayed this information to Roski and BattleBots instead of Profile. (Id. P 90.) Although Roski himself may have been physically located in California when arranging for the above events, his actions were unmistakably directed towards concrete New York events that comprise a substantial basis of Plaintiffs' cause of action. Wachtel v. Storm, 796 F. Supp. 114, 116 (S.D.N.Y. 1992) (citing Ostrowe v. Lee, 256 N.Y. 36, 175 N.E. 505 (1931)). Moreover, the fiduciary duty that Thorpe allegedly owed to Profile and Robot Wars is established by the Venture Agreement, which, as discussed above, is without question a New York contract that created a duty to a New York-based venture (Plotnicki [*30] Aff. Ex. B at 2), and thus the actions alleged above are directed to a duty established, governed and enforced by New York law. Accordingly, venue in the Southern District of New York is proper for this claim under § 1391(a)(2).

3. Unjust enrichment

Determining the application of § 1391(a)(2) to the third claim is a more difficult exercise, partly because of the somewhat derivative nature of the claim and partly because of the vague language in Plaintiff's complaint which references, without specifying which are relevant, the prior 121 paragraphs of their complaint. (Compl. PP 122-127.) The main basis for the claim is that "Defendants engaged in conduct, and encouraged Thorpe to engage in conduct designed to paralyze the Robot Wars business so that defendants could acquire a valuable part of the Robot Wars business for themselves." (Id. P 123.) n8 By reference, however, defendants' "conduct" includes all of the acts alleged for the above actions, including interfering

with the New York Venture Agreement, the New York lawsuit and the New York settlement negotiations. Thus, while the enrichment of the Defendants would occur in California, the means that were [*31] to accomplish that enrichment involved the undermining of Plaintiffs' venture in New York, which suffices to meet the substantiality test and establish venue for this claim under § 1391(a)(2).

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n8 Notwithstanding several references in their brief to a "deal with Comedy Central," by which Plaintiffs contend Defendants were unjustly enriched, this specific instance does not appear in the complaint itself. (Pls.' Br. at 10, 12.)

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4. Tortious interference with prospective business relations

Venue is also proper in the Southern District of New York for the fourth and final claim. Plaintiffs here allege that Defendants "engaged in fraudulent, dishonest, and unfair competition in order to interfere with the economic opportunities of the Robot Wars business." (Compl. P 129.) Specifically, Plaintiffs contend that Defendants diverted a corporate opportunity for Robot Wars to appear on the David Letterman Show, a New York-based program (Id. PP 48, 129), as well as other prospective business relationships [*32] with "a variety of third parties, including TalentWorks" (Id. P 129), also a New York company, albeit one located in the Eastern District of New York. (Defs.' Reply at 5.) Plaintiffs further maintain that Defendants assisted Thorpe in disrupting the settlement proceedings in New York, thus interfering with the potential settlement. (Id. PP 34-36.) Specifically, it is alleged that Thorpe was in New York to settle a New York lawsuit when Defendants convinced Thorpe not to settle through a variety of tactics, including sending an attorney to the New York mediation proceedings to prevent the settlement. (Id.) n9 Therefore two of the three business relationships allegedly interfered with were based in this district and one was based in the neighboring Eastern District of New York. Thus, substantial events giving rise to this claim transpired in this district, making venue in this Court proper.

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n9 Defendants' assertion that this activity was covered by a "mediation privilege" is unavailing, as such a privilege can protect only actual parties to the mediation, which Defendants were not. (Defs.' Br. at 13-14.) Defendants provide no legal support for the proposition that third parties covertly taking part in a mediation are protected by the mediation privilege. This is not surprising, as one of the purposes for the mediation privilege is to encourage settlement, precisely the opposite of what involving interested third-parties in a mediation session would contemplate. See generally Fields-D'Arpino v. Restaurant Assocs., Inc., 39 F. Supp. 2d 412, 417 (S.D.N.Y. 1999); Alan Kirtley, *The Mediation Privilege's Transition From Theory to Implementation*, J. Disp. Resol. 1, 9 (1995).

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B. Change of Venue: § 1404(a)

In letter briefs to the Court filed after oral argument, the parties have addressed whether a transfer of venue was appropriate pursuant to 28 U.S.C. § 1404(a). That statute provides that [HN7]"for the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." 28 U.S.C. § 1404(a). There is no dispute that the action in question could have been brought in the Northern District of California. Accordingly, [HN8]the determination whether to transfer on grounds of convenience is left to "the broad discretion of the district court." Palace Exploration Co. v. Petroleum Dev. Co., 41 F. Supp. 2d 427, 437 (S.D.N.Y. 1998) (citation omitted) (quoting In re Cuyahoga Equipment Corp., 980 F.2d 110, 117 (2d Cir. 1992)); Filmline (Cross-Country) Prod., Inc. v. United Artists Corp., 865 F.2d 513, 520 (2d Cir. 1989). The burden of showing the propriety of the transfer lies with the moving party, who must make a "clear-cut showing that a transfer is in the [*34] best interests of the litigation." Dwyer v. Gen. Motors Corp., 853 F. Supp. 690, 692 (S.D.N.Y. 1994) (citations omitted) (quotations omitted).

[HN9]While there is no precise method to determine whether to transfer a case pursuant to § 1404(a), courts are guided by a variety of factors, which include: (1) the convenience of witnesses; (2) the location of relevant documents and the relative ease of access to

sources of proof; (3) the convenience of the parties; (4) the locus of the operative facts; (5) the availability of process to compel attendance of unwilling witnesses; (6) the relative means of the parties; (7) a forum's familiarity with the governing law; (8) the weight accorded a plaintiff's choice of forum; and (9) trial efficiency and the interests of justice based on the totality of the circumstances. Reliance Insurance Co. v. Six Star, Inc., 155 F. Supp. 2d 49, 56-57 (S.D.N.Y. 2001) (citing 800- Flowers, Inc. v. Intercontinental Florist, Inc., 860 F. Supp. 128, 133 (S.D.N.Y. 1994); Ivy-Mar Co., Inc. v. Weber-Stephen Products Co., 1993 U.S. Dist. LEXIS 17965, 1993 WL 535166, at *4 (S.D.N.Y. Dec. 22, 1993). n10 While courts are to consider the [*35] above factors, there is "no rigid formula for balancing these factors and no single one of them is determinative." Citigroup, Inc. v. City Holding Company and City Nat'l Bank, 97 F. Supp. 2d 549, 561 (S.D.N.Y. 2000) (citations omitted). In addition, the Court must defer to the plaintiff's choice of forum unless the balance of convenience and justice weigh heavily in favor of defendant's proposed forum. Id.; Toy Biz, Inc. v. Centuri Corp., 990 F. Supp. 328, 330 (S.D.N.Y. 1998); Jannus Group, Inc. v. Independent Container, Inc., 1998 U.S. Dist. LEXIS 13106 *9 (S.D.N.Y. Aug. 24, 1998).

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n10 While Defendants seek to add to this list of factors another "key consideration" of "the pendency of related actions in the transferee district," citing APA Excelsior III L.P. v. Premiere Techs., Inc., 49 F. Supp. 2d 664, 667-68 (S.D.N.Y. 1999), this consideration would appear to be not a separate factor, but simply an aspect of the trial efficiency/interests of justice factor. Moreover, APA Excelsior is distinguishable from the instant case as in that case there were twenty-two previously-filed and then-consolidated actions in the Northern District of Georgia that "hinged on the same core of operative facts," versus one case filed in the Southern District of New York pursuant to a forum selection clause in a merger agreement. Id. at 670. Here, there is hardly such an overwhelming preponderance of cases in one district, but rather, related cases have been filed both in New York and in California during the history of the Robot Wars litigation.

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[*36]

Plaintiffs claim there are nine potential non-party witnesses who are either New York residents or subject to subpoena in New York, but do not specify their identities. (Pls.' Letter Br. at 6.) Although Defendants do not address this factor in their letter brief, Mark Thorpe, the most significant third-party witness, is a long-time resident of Northern California (Defs.' Br. at 1), as is Robert Leppo, another significant witness (Leppo Aff. at 2). [HN10]"When weighing the convenience of the witnesses, courts must consider the materiality, nature and quality of each witness, not nearly the number of witnesses in each district." TM Claims Service A/S/O Fuji Photo Film v. KLM Royal Dutch Airlines, 143 F. Supp. 2d 402, 406 (S.D.N.Y. 2001) (citation omitted). Thus, as important third party witnesses live in California while other witnesses most likely reside on both coasts, this factor does little to favor one venue over the other. n11

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n11 Assessing this factor is necessarily somewhat difficult at this stage of the case, as discovery has not commenced and neither party has formally identified the witnesses who will be called to testify at trial.

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[*37]

Neither side presents or argues the location of documents, perhaps because it is evident that relevant documents will be found in both New York and California, and thus, this factor does little to help either side. In any event, [HN11]the location of records is not a compelling consideration when records are easily portable. Coker v. Bank of America, 984 F. Supp. 757, 766 (S.D.N.Y. 1997) ("In today's era of photocopying, fax machines and Federal Express," the location of documents factor is neutral).

As the parties to the suit are located both in California and in New York, the convenience of the parties factor does not weigh in either party's favor. Although Roski is a California resident and BattleBots is a California Corporation, BattleBots does business in New York, as shown by its interactions with Comedy Central, which is located in this district. (Roski Supp. Aff. at 2.) Similarly, although Astor Holding and Robot Wars are New York companies, Robot Wars held events in California. (Plotnicki Aff. at 3.) Indeed, Defendants

conceded on the record in open court that this factor is a wash. (6/21/01 Tr. at 37.)

The main factor in Defendants' favor is that the primary [*38] locus of operative facts occurred in California (Def's. Br. at 11-15), something plaintiffs do not contest (Pls.' Br. at 10-12). As Roski and Thorpe both live in California, many of the alleged unlawful activities were committed there. However, even if many of the events giving rise to Plaintiffs' claim occurred in California, significant acts that occurred in New York or were directed at New York, as discussed in the § 1406 analysis above. Thus, this factor does not weigh heavily in favor of California.

Neither side has argued that process to compel unwilling witnesses is an issue in this case. Further, there is nothing on the record before the Court to suggest that trial in New York would impede the attendance of any contemplated witness. Similarly, the relative means of the parties has not been persuasively presented to the Court, although Plaintiffs assert, without specific evidentiary support, that they are of limited means while Defendants have "unlimited resources." (Pls.' Letter Br. at 7.) As this conclusory statement is unsupported and as Defendants have not addressed this point, this factor does not favor either side. See, e.g. TM Claims Service, 143 F. Supp. 2d 402, 405 n. 4 [*39] (citation omitted).

In addition, familiarity with the governing law, whether it be that of California or New York, does little to favor either party, as this factor is generally given little weight in federal courts. See Prudential Sec. Inc. v. Norcom Dev., Inc., 1998 U.S. Dist. LEXIS 10569, at *17 (S.D.N.Y. July 15, 1998) ("this Court has routinely held that [HN12]the 'governing law' factor is to be accorded little weight on a motion to transfer venue because federal courts are deemed capable of applying the substantive law of other states"). To the extent this factor could be held to have any weight, defendants have not persuasively argued that California law rather than New York law should apply to Plaintiffs' claims, nor that the two states' laws differ in any significant relevant respect.

Defendants choose to focus largely on the trial efficiency and interests of justice factor, in arguing that these claims should be consolidated with the bankruptcy proceedings in the Northern District of California. (Defs.' Letter Br. at 2). [HN13]This factor "relates primarily to issues of judicial economy." Dostana Enterprises LLC v. Federal Express Corp., 2000 U.S. Dist. LEXIS 11726, [*40] *19 (S.D.N.Y. Aug. 9, 2000). Thorpe's bankruptcy proceedings in California, however, are largely complete. Profile appealed the Bankruptcy Court's ruling to the Northern District of California, which affirmed the decision in

part and remanded to the Bankruptcy Court on the sole issue of damages. (Pls.' Letter Br. Ex. A at 19.) The other proceeding in Thorpe's bankruptcy case that involves Robot Wars is a narrow adversary proceeding brought by Thorpe against Profile for violating the discharge injunction by failing to discontinue a lawsuit against Thorpe after his reorganization plan was confirmed. (Pascoe Aff. at 2.) Additionally, and more to the point, the bankruptcy proceedings before the California court, including the Bankruptcy Settlement, did not specifically consider Roski's and Battlebots' alleged breaches of the Venture Agreement, but rather considered Marc and Denise Thorpe's breaches. Hence, the claims against Roski and BattleBots have not been litigated in the California action. Finally, it is not at all clear that Plaintiffs' claims against Roski and BattleBots, who are not bankrupt, could be consolidated with bankruptcy court proceedings involving Thorpe. Given these circumstances, [*41] the pendency of the California bankruptcy appeal provides no efficiency ground for transfer of an essentially distinct, if somewhat overlapping, litigation. See Wright, Miller & Cooper, Federal Practice & Procedure: Jurisdiction 2d § 3584 at 454-55 (the related case factor need not be given weight "if there is no realistic possibility of consolidating the present case with the related cases"). Further, as this Court is already familiar with the claims alleged, judicial economy is served by keeping venue in this district.

Since the other factors relevant to venue are fairly evenly balanced, Plaintiffs' choice of forum becomes the important consideration that tips the scales in Plaintiffs' favor to keep venue in New York for each of the claims raised. It is axiomatic that [HN14] a plaintiff's choice of forum is entitled to great deference when the plaintiff has sued in the plaintiff's home forum. Stewart Org., Inc. v. Ricoh Corp., 487 U.S. 22, 29, 101 L. Ed. 2d 22, 108 S. Ct. 2239 (1988) (quoting Van Dusen v. Barrack, 376 U.S. 612, 622, 11 L. Ed. 2d 945, 84 S. Ct. 805 (1964)); Royal & Sunalliance v. British Airways, 167 F. Supp. 2d 573, 2001 U.S. Dist. LEXIS 4508 [*42] at *2 (S.D.N.Y. 2001). See also Koster v. (Am.) Lumbermens Mut. Cas. Co., 330 U.S. 518, 524, 91 L. Ed. 1067, 67 S. Ct. 828 (1947); Piper Aircraft Co. v. Reyno, 454 U.S. 235, 255-56 & n.23, 70 L. Ed. 2d 419, 102 S. Ct. 252 (1981); Iragorri v. United Techs. Corp., 274 F.3d 65, 2001 U.S. App. LEXIS 26033 *7 (2d Cir. 2001) (forum non conveniens context) (citations omitted); Wright, Miller & Cooper, Federal Practice and Procedure: Jurisdiction 2d § 3848. Further, venue should not be transferred under § 1404(a) "where the result is merely to shift the inconvenience to plaintiff." Shube's Manufacturing Corp. v. Blake's Bros. Int'l. Inc., 1990 U.S. Dist.

LEXIS 1779, at *12 (S.D.N.Y. Feb. 21, 1990). Here, two New York companies have chosen to litigate in New York claims related to this district.

In short, Defendants have not met their burden under § 1404(a). The balance of factors does not weigh heavily in Defendants' favor, but instead, is largely in equipoise. Given the deference courts are required to give to a plaintiff's choice of forum, this Court declines to transfer this case to the Northern District [*43] of California under § 1404(a).

II. Motion to Dismiss Under Rule 12(b)(6)

[HN15] On a motion to dismiss under Rule 12(b)(6), the court "must accept as true the factual allegations in the complaint, and draw all reasonable inferences in favor of the plaintiff." Harris v. City of New York, 186 F.3d 243, 247 (2d Cir. 1999). The court must limit itself to facts stated in the complaint, including documents attached to or incorporated by the complaint. See Dangler v. New York City Off Track Betting Corp., 193 F.3d 130, 138 (2d Cir. 1999). The court should grant the motion only if, "after viewing plaintiff's allegations in this favorable light, it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Id.* The court's role on a Rule 12(b)(6) motion is "merely to assess the legal feasibility of the complaint, not to assay the weight of the evidence which might be offered in support thereof." Cooper v. Parsky, 140 F.3d 433, 440 (2d Cir. 1998) (internal quotation marks and citation omitted). While the pleading standard is liberal, "bald assertions and conclusions of [*44] law are insufficient." *Id.* at 440 (citing Leeds v. Meltz, 85 F.3d 51, 53 (2d Cir. 1996)).

A. Tortious Interference with Contract

Defendants move to dismiss the tortious interference of contract claim on three grounds: the claim is barred by the statute of limitations, the claim has previously been satisfied, and the claim fails as a matter of law.

1. Statute of limitations

[HN16] New York has a three-year statute of limitations for tort claims. N.Y. C.P.L.R. § 214(4); Van Dussen-Storto Motor Inn, Inc. v. Rochester Tel. Corp., 63 A.D.2d 244, 407 N.Y.S.2d 287, 292 (4th Dep't 1978). Defendants maintain that Plaintiffs' claims for tortious interference of contract accrued -- at the latest -- on July 25, 1997, the filing date of the action that Astor commenced against Thorpe alleging, among other things, breach of contract. Plaintiffs claim, however, that Roski's involvement in the ongoing dispute was not known until May 13, 1998, when Roski's loan to Thorpe to fund Thorpe's

bankruptcy proceedings was publicly disclosed in the bankruptcy court filings. Plaintiffs maintain that principles of equitable estoppel prevent the statute of [*45] limitations from running against plaintiffs who were unaware of their cause of action. (Pls.' Br. at 15.)

While Defendants list numerous allegations in the complaint itself to show that Roski's involvement was known to Plaintiffs prior to the bankruptcy filings, the allegations in the complaint represent information known to the Plaintiffs at the time of filing the complaint and do not necessarily demonstrate what was previously known by Plaintiffs. Further, although the complaint shows that Plaintiffs were suspicious of Leppo's involvement in July 1997, Thorpe falsely denied Leppo's involvement, supporting Plaintiffs' claim that they lacked actual knowledge of Roski's and Leppo's involvement at the relevant time.

[HN17]For New York tort claims, the Court considers New York's doctrine of equitable estoppel, which is similar, but not identical, to the federal doctrine of equitable tolling. Johnson v. Nyack Hosp., 86 F.3d 8, 11 (2d Cir. 1996); Cary Oil Co., Inc. v. MG Refining and Mktg. Inc., 90 F. Supp. 2d 401, 419 (S.D.N.Y. 2000). Equitable estoppel prevents a defendant from pleading the statute of limitations if plaintiff refrained from filing a timely [*46] action because of defendants' affirmative acts of misrepresentation or concealment. Plaintiffs must also demonstrate that they exercised due diligence in bringing the cause of action and reasonable care in ascertaining facts which might have led to discovery of their claim. Id. at 420; see also Menke v. Glass, 898 F. Supp. 227, 232-233 (S.D.N.Y. 1995) ("the critical question is whether the circumstances of the case put plaintiffs on notice . . . and if, through the exercise of reasonable diligence, they would have discovered the wrongdoing"). The complaint here alleges both that Thorpe affirmatively misrepresented Roski's involvement and that Plaintiffs were reasonably diligent in attempting to determine Defendants' role in the alleged actions by asking Thorpe and his attorney of Leppo's connection to the alleged violations. (Compl. P 21.) Perhaps these allegations will not in the end be established. At this stage of the proceeding, however, the facts alleged must be taken as true. Accordingly, the statute of limitations defense presents issues of fact that must be resolved at trial, or at least at summary judgment after development of a full factual [*47] record. It cannot be found on the face of the complaint that the tortious interference with contract claim is time-barred as a matter of law.

2. Claim preclusion

Defendants also argue that "in the Thorpe-Astor Adversary Proceeding, Astor was compensated for any

alleged damages it suffered as a result of Thorpe's breach of contract" (Defs.' Br. at 17.) The tortious interference with contract claim, however, is a separate tort for which there is a separate cause of action brought against different persons than those sued in the bankruptcy court. While a breach of contract claim against Thorpe would be precluded, having already been litigated in the former proceeding, the claim at issue here involves Roski's and BattleBots' involvement in that breach, which has not yet been litigated, and for which a claim is not extinguished. While Plaintiffs would not be entitled to duplicative compensatory damages for any injuries for which they have already been compensated by Thorpe, Plaintiffs are entitled to demonstrate that Defendants here are joint tortfeasors with Thorpe, as well as to seek additional remedies, including punitive damages, against the Defendants.

3. Failure to state [*48] a claim

[HN18]To state a claim for tortious interference with contract under New York law, a plaintiff must allege (1) the existence of a valid contract between itself and a third party; (2) defendant's knowledge of that contract; (3) defendant's intentional procuring of a breach; and (4) damages. There is also a causation burden on the plaintiff, who must assert that defendant's actions were the "but for" cause of the alleged breach of contract -- in other words, that there would not have been a breach but for the defendant's activities. Lastly, the pleadings must have some factual specificity to state a claim for tortious interference; conclusory assertions are not sufficient. Alevizopoulos & Assocs. v. Comcast Int'l Holdings, 100 F. Supp. 2d 178, 186 (S.D.N.Y. 2000).

Plaintiffs identify two contracts with which Defendants interfered: the July 22, 1994, Venture Agreement between Profile Records, Inc. and Marc Thorpe that created Robot Wars, Inc., and the February 2, 1999, Bankruptcy Settlement Agreement among Profile Holdings, Inc., Robot Wars LLC, Steven Plotnicki and Marc Thorpe. (Compl. PP 111-113; Pls.' Ex. B; Defs.' Ex. F.) Plaintiffs claim that, notwithstanding [*49] their knowledge of these agreements, Defendants deliberately interfered with the contracts (id. PP 112, 115) by inducing Thorpe to breach both of them (id. PP 112-113), resulting in an estimated \$ 5 million in damages to Plaintiffs (id. P 114).

While the claims meet the required factual specificity as to the elements of the cause of action, the required causation is not as clearly alleged. However, Plaintiffs have alleged certain facts, particularly that Defendants formed an "Entity-in-Formation," and planned to hold Robot Wars '97 with Thorpe before the breach of the Venture Agreement, which suggest that Plaintiffs

could show that without the assurance of a future business partner, Thorpe would not have breached the contract with Plaintiffs. n12 (Id. P 111.)

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n12 The terms of the Venture Agreement state that the joint venture "shall terminate at the election of either party, exercised by giving written notice to the other party . . . upon a material breach by either party, other than the party giving notice of termination." (Plotnicki Aff. Ex. B at 5.) Although Profile previously brought an action against Thorpe in this district on July 25, 1997, for violating the Venture Agreement, it does not appear that Profile sought to terminate the Venture because of the breach. Rather, the Venture was converted following settlement negotiations into a limited liability company operating agreement, with Thorpe and Profile each having a 50% interest in Robot Wars LLC. As the agreement was restructured in this manner, it is possible for there to be more than one period of relevant interference with contract.

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Likewise, Plaintiffs have pled specific facts that, if proven, could show that but for Roski's involvement, Thorpe would not have breached the Bankruptcy Settlement, including that Roski (a) hired attorney Fierst to advise Thorpe on the Bankruptcy Settlement (P 57); (b) sat alongside Thorpe at the Bankruptcy Court's approval of the Settlement (P 74); (c) "encouraged" Thorpe's various e-mail messages that allegedly failed to promote Robot Wars as required by the Settlement Agreement (PP 74-79); and (d) secretly arranged for Thorpe to be placed on his business partner's payroll at around the time of the settlement, and indemnified his partner for the relationship (PP 82-83). Thus, the facts alleged in the complaint, if they are substantiated, would permit a reasonable jury to conclude that but for Roski's actions, Thorpe would not have breached the Bankruptcy Settlement.

Thus, Plaintiffs have adequately alleged facts constituting a claim of tortious interference with contract. Accordingly, Defendants' motion to dismiss that claim is denied.

B. Aiding and Abetting Breach of a Fiduciary Duty

Defendants claim that the statute of limitations for a claim of breach of a fiduciary duty [*51] is three years, thus barring Plaintiffs from bringing this claim. Plaintiffs maintain that the appropriate time period is six years where the relief sought is equitable in nature or the breach grounded in fraud, or alternatively, that Roski's breach fell within the three-year statute of limitations period.

Even assuming *arguendo* that the applicable limitations period is three years, there is no statute of limitations bar here. [HN19] Principles of equitable estoppel require that "a statute of limitations does not run against a plaintiff who is unaware of his cause of action." Dillman v. Combustion Engineering, Inc., 784 F.2d 57 (2d Cir. 1986) (citations omitted). In this case, the fact of which Plaintiffs needed to be aware is not the claimed breach of duty by Thorpe, but the alleged involvement by Defendants in inducing that breach. As stated above, Plaintiffs allege that they did not know, and could not have known, of the existence of contractual interference by Roski until Roski's May 13, 1998, loan to fund Thorpe's bankruptcy petition was publically disclosed. For the purposes of this motion, the Court must accept these allegations as true. Thus, since the instant action [*52] was filed on March 5, 2001, the claim falls within the three-year statute.

Defendants also argue that Plaintiffs have failed to state a claim for which relief can be granted. [HN20] To state a claim for aiding and abetting a breach of fiduciary duty under New York law, Plaintiffs must allege (1) a breach by a fiduciary of obligations to another, and (2) that the defendant knowingly induced or participated in the breach. Wight v. Bankamerica Corp., 219 F.3d 79, 91 (2d Cir. 2000). Plaintiffs assert in the complaint that Defendants, knowing of the Venture Agreement between Thorpe and Profile and the later non-compete agreement in the Bankruptcy Settlement, encouraged Thorpe to attack Profile publicly (Compl. PP 19, 38); advised him to deadlock the Robot Wars business (id. PP 36,40,45); sent their attorney to a private mediation with Profile (id. P 35); caused Thorpe to create a cloud on Robot Wars' ownership of the Robot Wars trademark (id. P 47); arranged for Thorpe to file for bankruptcy to obtain control of the Robot Wars business (id. P 43); and placed Thorpe on his payroll (id. PP 82-83). Taking these allegations as true, this claim is adequately pled. [*53]

Accordingly, Defendants' motion to dismiss the claim of aiding and abetting breach of a fiduciary duty is denied.

C. Unjust Enrichment

Plaintiffs allege that Defendants engaged in conduct to obstruct the Robot Wars business, causing the erosion and goodwill of Robot Wars' market position, in order to acquire part of the Robot Wars business for themselves. (Compl. PP 123-125.) Defendants maintain that the claim of unjust enrichment, similar to quantum meruit, requires that "plaintiffs conferred a benefit on defendants," which Plaintiffs fail to demonstrate in their complaint. (Defs.' Br. at 23.)

[HN21]Unjust enrichment is best understood as a general principle, straddling the division between contract and tort, that underlies various legal doctrines and remedies, rather than as a single well-defined cause of action. 22A NY Jur. Contracts § 512. In essence, it is an action for restitution or on quasi contract, and "[the] existence of a valid and enforceable written contract governing a particular subject matter ordinarily precludes recovery in quasi contract for events arising out of the same subject matter." Feigen v. Advance Capital Management Corp., 150 A.D.2d 281, 541 N.Y.S.2d 797, 799 [*54] (1st Dep't. 1989) (citing Clark-Fitzpatrick, Inc. v Long Is. R.R. Co., 70 N.Y.2d 382, 521 N.Y.S.2d 653, 656, 516 N.E.2d 190 (N.Y. 1987)). Unjust enrichment is not an appropriate remedy for fruitless negotiation, frustration or disappointed expectations. Cunningham v. Merchant-Sterling Corp., 155 Misc. 2d 226, 587 N.Y.S.2d 492, 494 (1991); Songbird Jet Ltd., Inc. v. Amax, Inc., 581 F. Supp. 912, 926 (S.D.N.Y. 1984); 22A NY Jur. Contracts § 512.

[HN22]To state a claim for unjust enrichment in New York, a plaintiff must allege that (1) defendant was enriched; (2) the enrichment was at plaintiff's expense; and (3) the circumstances were such that equity and good conscience require defendants to make restitution. Louros v. Cyr, 175 F. Supp. 2d 497, 2001 U.S. Dist. LEXIS 4663 *35 (S.D.N.Y. 2001) (citing Huntington Dental & Medical Co., Inc. v. Minnesota Mining and Mfg. Co., 1998 U.S. Dist. LEXIS 1526, *17 (S.D.N.Y. Feb. 11, 1998)).

Although the conferral of a benefit upon Defendants is not clearly stated in the complaint, the crux of Plaintiffs' allegation appears to be that Roski and BattleBots were enriched in two basic [*55] ways. First, Plaintiffs contend Roski and BattleBots harmed RobotWars' business by "paralyzing the Robot Wars business . . . and causing the erosion of its goodwill and market position," so that Defendants could "acquire a valuable part of the Robot Wars business." (Compl. P 123.) This was allegedly done by "either divesting Profile of its interest in the Robot Wars business or by forcing the Venture to grant Roski and BattleBots a license." (Id.) Second, Plaintiffs contend that BattleBots procured "key competitors" from prior

Robot Wars events for BattleBots. (Compl. PP 99-100, 125.) Thus, Defendants' enrichment has been alleged. Whether the claimed enrichment is alleged to have been at Plaintiffs' expense is more dubious, as that claim appears to be based largely on the generalized notion of the erosion of Robot Wars "goodwill and market position." Though these allegations are less than specific, and do not suggest that Plaintiffs conferred a benefit on Defendants, it cannot be said at this point that Plaintiffs could not demonstrate facts to show that Defendants' enrichment came at their expense.

With such a vague claim, the equity standard is of critical importance. In this [*56] case, virtually all of the facts that could conceivably suggest that "equity and good conscience require Defendants to make restitution" are facts that are alleged to constitute specific torts charged elsewhere in the complaint. For example, in the tortious interference with contract claim, Plaintiffs allege Defendants caused Thorpe to file for bankruptcy in an effort to divest Profile of its interest in the Robot Wars business (Compl. P 111), and in the aiding a breach of fiduciary duty claim, Plaintiffs maintain Defendants' alleged role in Thorpe's breaching of the Venture Agreement resulted in unjust enrichment (Compl. PP 119-120). Whether any benefit obtained by Defendants at Plaintiffs' expense by those alleged actions was "unjust" is better assessed according to the well-established rules defining the applicable torts, rather than by free-floating notions of "equity and good conscience."

The sole specific allegation that is not found elsewhere in the complaint is the question of the grant of a license from Robot Wars to Defendants. It is unclear precisely which license Plaintiffs refer to in this claim. Although the complaint mentions several licenses-in-negotiation, there appears [*57] to only have been one license that was ultimately granted to Thorpe: the license permitting Thorpe to conduct Robot Wars '97, that resulted from the settlement of August 6, 1997. (Compl. P 22.) Plaintiffs rely on Rostropovich v. Koch, 1995 U.S. Dist. LEXIS 2785 (S.D.N.Y. March 7, 1995) for the proposition that "even though defendants paid for the right . . . defendants did not pay [plaintiff] Rostropovich and a jury might find that the defendants benefitted monetarily at plaintiff's expense." (Pls.' Br. at 22). Rostropovich is not analogous to the instant situation, however, as it is nowhere alleged that Plaintiffs did not receive consideration for the license. In fact, Thorpe gave valuable consideration for that license, in the form of the settlement agreement. If Thorpe did not completely fulfill the promises exchanged for the license, because he failed to comply with the terms of the settlement agreement after staging Robot Wars '97, Plaintiffs

deserve compensation to the extent they can show that Defendants achieved this result by tortious behavior, as alleged in the first two claims. If, however, they cannot establish the elements of the alleged torts, they [*58] have alleged no independent theory on which their success could be labeled unjust, such that equity should fill the gap and provide restitution where no tortious behavior can be shown. Accordingly, Defendants' motion to dismiss the unjust enrichment claim is granted.

D. Tortious Interference with Prospective Contractual Relations

[HN23]The tort of interference with potential contractual relations consists of an intentional and improper interference with another's prospective contract. "To sustain its claim for tortious interference with prospective economic advantage, Plaintiffs must satisfy "an extremely high pleading standard" with allegations that include elements "more demanding than those for interference with [the] performance of an existing contract." Six West Retail Acquisition, Inc. v. Sony Theatre Mgmt Corp., 2000 U.S. Dist. LEXIS 2604 *101 (S.D.N.Y. March 8, 2000) (citing Fine v. Doernberg & Co., Inc., 203 A.D.2d 419, 610 N.Y.S.2d 566, 567 (2d Dep't 1994).

To state a prima facie case under New York law, Plaintiffs must establish (1) business relations with a third party; (2) the defendant's interference with those business relations; [*59] (3) that the defendant acted with the sole purpose of harming the plaintiff or used dishonest, unfair, or improper means; and (4) injury to the business relationship. See Nadel v. Play-By-Play Toys & Novelties, Inc., 208 F.3d 368, 382 (2d Cir, 2000) (citing Purgess v. Sharrock, 33 F.3d 134, 141 (2d Cir.1994)); Restatement (Second) of Torts § 766B.

Plaintiffs claim that Defendants interfered with two distinct business opportunities of Robot Wars, specifically, potential contracts with David Letterman and TalentWorks (Compl. P 129), causing damages they estimate at \$ 5 million (Compl. P 130). Defendants allege, however, that they did no more than engage in competitive activity, which is not actionable under a theory of intentional interference with prospective economic advantage, Six West Retail, 2000 U.S. Dist. LEXIS 2604 at *101.

1. Existing business relations

[HN24]In the very nature of this tort, an existing contract is not required to state a claim for tortious interference with prospective business relations. Hannex Corp. v. GMI, Inc., 140 F.3d 194, 205 (2d Cir. 1998); Volvo N. Am. Corp. v. Men's Intern. Prof'l Tennis Council, 857 F.2d 55, 74 (2d Cir. 1988). [*60] However, there is a threshold requirement that a

plaintiff "must specify some particular, existing business relationship through which plaintiff would have done business but for the allegedly tortious behavior." Six West Retail, 2000 U.S. Dist. LEXIS 2604 at *101 (citing Minnesota Mining and Mfg. Co. v. Graham-Field, Inc., 1997 U.S. Dist. LEXIS 4457, 1997 WL 166497 at *7 (S.D.N.Y. Apr. 9, 1997) (internal citations omitted); see also Envirosource, Inc. v. Horsehead Resource Dev. Co., 1996 U.S. Dist. LEXIS 9099, 1996 WL 363091 at *14 (S.D.N.Y. 1996).

It is questionable whether Plaintiffs can establish such a business relationship with the David Letterman Show. In fact, the complaint supports the view there was no existing relationship of which Plaintiffs were aware, but rather the mere possibility of a limited future relationship between Robot Wars and the David Letterman Show which was only known to Thorpe. (Compl. P 48.) Further, while Thorpe knew of this potential relationship, the relationship in question appears to be a one-off appearance on the Letterman show that will be hard to argue, even with more evidence, meets the requirement of an "existing business relationship." Plaintiffs [*61] rely on Hannex for the proposition that it need not plead that it would have entered into a contract to state a claim for interference with prospective business relations. However, in Hannex, although plaintiff Hannex did not have a contract to prove the existence of a business relationship with S&S Japan, Hannex had an ongoing distributorship relationship that was shown to be "continuing" or "customary." This type of relationship is different from that alleged here, which appears to be nothing more than a preliminary contact that had not yet ripened even to negotiations. Whether the Letterman allegations meet the standard for this tort is thus a close question.

The alleged relationship with TalentWorks, however, was a longer term, potentially "continuing" relationship. Although the nature of the potential TalentWorks relationship is not specified in the complaint, a supporting affidavit shows that TalentWorks sought in September of 1997 to "open discussions" with Robot Wars about developing "a mutual agreement for pay-per-view television rights as well as other television related exposures." (Stucker Aff. Ex. A.) However, Defendants also provide a declaration of TalentWorks' [*62] CEO, Leonard Stucker, who states under oath that he formally withdrew his proposal to Thorpe and Robot Wars a year before he heard of and made contact with Roski and BattleBots. (Stucker Aff. PP 6, 8.) If Stucker is to be believed, Plaintiffs will be unable to establish that any action of Defendants disrupted Plaintiffs' relationship with TalentWorks. At this stage of the

litigation, however, Plaintiffs' allegations must be taken as true, and Plaintiffs have alleged that the failure of this relationship resulted from Defendants' interference. (Compl. P 129.) Plaintiffs are entitled to test Stucker's assertions through discovery.

Given that the TalentWorks allegations can meet this requirement, it is unnecessary to decide whether the Letterman allegations are independently sufficient to meet the test. Since the claim will not be dismissed in any event, it is preferable to allow discovery on the Letterman episode as well, and defer until development of a fuller record the question whether the Letterman claim will remain part of the case.

2. Wrongful purpose/wrongful means

[HN25]Even if the requirement of existing business relations is met, in order to state a claim for tortious interference [*63] with prospective business relations, Plaintiffs must allege either (1) that Defendants' sole purpose was to harm the Plaintiffs, or (2) that Defendants employed wrongful means in their interference.

The first test cannot be met as Plaintiffs and Defendants are economic competitors and, thus, disruption of Plaintiffs' business cannot be shown to be the sole purpose of Defendants' alleged interference. It is well settled that [HN26]a defendant's "status as a competitor . . . may excuse him from the consequences of interference with prospective contractual relationships, where the interference is intended at least in part to advance the competing interest of the interferer, no unlawful restraint of trade is effected, and the means employed are not wrongful." Six West Retail, 2000 U.S. Dist. LEXIS 2604 *106 (citing Guard-Life Corp. v. S. Parker Hardware Mfg. Corp., 50 N.Y.2d 183, 191, 428 N.Y.S.2d 628, 406 N.E.2d 445 (1980)); Rest. 2d Torts § 768 (1)(d)). Hence, one who intentionally causes a third party not to enter into a prospective contract with his competitor does not interfere improperly with the other's relation if his purpose is at least in part to [*64] advance the interest of competing with the other. Here, Defendants are direct competitors of Plaintiffs, involved in precisely the same highly specialized business. In such a situation, it cannot be plausibly maintained that competitive impulses were not, in part, behind Defendants' actions.

Thus, [HN27]the actions alleged for this claim can only be tortious if Defendants used "dishonest, unfair, or improper means" (collectively called "wrongful means"), to interfere with Plaintiffs' potential contractual relations. Wrongful means include "physical violence, fraud, misrepresentation, civil suits, criminal prosecutions and some degree of

economic pressure, but more than simple persuasion is required." Snyder v. Sony Music Entertainment, Inc., 252 A.D.2d 294, 300, 684 N.Y.S.2d 235 (1st Dept. 1999) (citation omitted). Plaintiffs allege that "Defendants engaged in fraudulent, dishonest and unfair conduct in order to interfere" with Plaintiffs' prospective contractual relations. (Compl. P 129.) Fraud is only alleged, if at all, to the extent that Thorpe was violating his fiduciary duty to Plaintiffs. In Hannex, considering conduct similar to that here, the Second Circuit [*65] held that "if a jury were to find the Defendants tortiously interfered with Salvo's fiduciary duties to [plaintiff] Hannex, they could also find that such interference constituted wrongful means sufficient to support a tortious interference with contractual and prospective business relations claim." Hannex, 140 F.3d at 206. Thus, although fraud may only be alleged as to Thorpe, a jury could find that Roski's alleged tortious interference with Thorpe's breach of fiduciary duty to Profile and Robot Wars constitutes wrongful means to support this claim. Accordingly, Defendants' motion to dismiss this claim is denied.

IV. Motion to Strike

Defendants claim Plaintiffs are not entitled to compensatory damages for the alleged interference with contract as they have already received such damages in the prior Thorpe-Astor Adversary Proceeding (Defs.' Br. at 23; Marc and Denise Thorpe v. Profile Holdings, Inc., Bankr. N.D. Cal. (Aug. 14, 2000)) and that Plaintiffs have no basis on which to request attorneys' fees. They therefore move to strike both demands. Plaintiffs offer no law or precedent to support their requests for either compensatory damages or attorneys' [*66] fees.

A. Compensatory Damages

It is telling that Defendants' motion to strike compensatory damages is not based on a claim of res judicata, although the substance of Defendants' argument is similar to an assertion that the claim for damages should be precluded as the issue was already litigated. Res judicata could not bar compensatory damages here because the Defendants in this action, Roski and BattleBots, are separate and distinct from those in the prior proceeding. [HN28]When deciding whether the doctrine of res judicata bars a subsequent action, the court must consider whether (1) the prior decision was a final judgment on the merits, (2) the litigants were the same parties, (3) the prior court was of competent jurisdiction, and (4) the causes of action were the same. Corbett v. MacDonald Moving Servs., 124 F.3d 82, 88 (2d Cir. 1997).

This case involves plaintiffs, one of whom was a party as the prior proceeding, seeking to bring claims against two new defendants. The prior Adversary Proceeding was between Profile and the Thorpes, not Roski or BattleBots. Profile was not required to bring its claims against Roski in the bankruptcy proceedings because Profile has [*67] separate and distinct causes of action against each defendant. Northern Assur. Co. of Am. v. Square D Co., 201 F.3d 84, 89 (2d Cir. 2000) (where plaintiff chooses to sue one joint tortfeasor, but not the other, the unadjudicated claim survives the first judgment and can be brought against other potentially liable parties); Restatement (Second) of Judgments § 49 cmt. a (1982) (claim against others liable for the same harm is considered separate for preclusion purposes). Thus, although Plaintiffs' claim for compensatory damages for breach of contract may have been finally adjudicated as against the Thorpes, Plaintiffs are entitled to litigate their claims against Roski and BattleBots.

However, [HN29] while multiple parties may be liable to Plaintiffs for the same injury, satisfaction of only one judgment for that injury may be collected. Northern Assur. Co. of Am., 201 F.3d at 89; Gentile v. County of Suffolk, 926 F.2d 142, 153 (2d Cir. 1991) (when plaintiff seeks compensation for same damages under different legal theories of wrongdoing, plaintiff generally should receive compensation for an item of damages only once); Conway v. Icahn & Co., Inc., 16 F.3d 504, 511 (2d Cir. 1994) [*68] ("where plaintiff[s]' theories of recovery are based on a single set of facts, and the economic loss sustained was predicated on those unitary facts," only a single recovery should be allowed); see also Broome v. Biondi, 17 F. Supp. 2d 211, 227 (S.D.N.Y. 1997). Thus, while both Thorpe and the Defendant here can both be found liable for Plaintiffs' breach of contract injury, only one recovery may be collected for compensatory damages for the breach of the Venture Agreement with Thorpe.

In the Thorpe-Astor Adversary Proceeding, Thorpe's breach of the Venture Agreement was litigated to a judgment, and the Plaintiffs' award (\$ 225,666.67) was offset against Profile's larger debt to Thorpe (\$ 250,000), resulting in a judgment that Profile pay Thorpe \$ 24,333.33. The decision, however, was appealed by Profile to the District Court, which remanded the calculation of damages to the Bankruptcy Court, directing that contract rather than tort theory be applied in the calculation. (Pls.' Ex. A at 19.) So far as the record before this Court reveals, the damage award from that action has not been satisfied, nor even finally determined, and, thus, the motion to strike compensatory [*69] damages is premature at this stage. If, however, a final damages award is

entered against Thorpe and the judgment is paid, Plaintiffs will not be entitled to a double recovery, and Defendants' motion can be renewed. Alternatively, if Plaintiffs cannot, for whatever reason, execute their judgment against Thorpe, there is no reason why they would not be entitled to obtain and execute a judgment against Roski and/or BattleBots as joint tortfeasors for the alleged claim. Northern Assur. Co. of Am., 201 F.3d at 88. Accordingly, the motion to strike the demand for compensatory damages for tortious interference with contract is denied, without prejudice to renewal at a later stage in the litigation if a prior judgment for this claim is obtained and satisfied.

B. Attorneys' Fees

Plaintiffs make a perfunctory request for attorneys' fees at the end of their complaint. [HN30] Under New York law, attorneys' fees are not recoverable by prevailing parties absent express statutory or contractual authority or court rule. See Severino v. Classic Collision, Inc., 280 A.D.2d 463, 719 N.Y.S.2d 902, 903 (2d Dep't 2001); Klein v. Sharp, 41 A.D.2d 926, 343 N.Y.S.2d 1014, 1015 [*70] (1st Dep't 1973). Plaintiffs' claims do not derive from a statute or contract authorizing recovery of attorneys' fees, but rather are articulated as common law tort claims for which attorneys' fees are ordinarily not available. In light of the litigious history of the Robot Wars dispute, this would be the last case in which any court would consider expanding the law of attorneys' fees eligibility in such a way as to provide further incentives to either party to prolong the dispute. Accordingly, Defendants' motion to strike Plaintiffs' demand for attorneys' fees is granted.

CONCLUSION

Defendants' motions to dismiss for lack of venue or to transfer venue are denied. Defendants' motion to dismiss for failure to state a claim is granted as to Count III and denied as to Counts I, II, and IV. Defendants' motion to strike Plaintiffs' request for compensatory damages is denied, and the motion to strike Plaintiffs' request for attorneys' fees is granted.

SO ORDERED:

New York, New York
January 15, 2002

Gerard E. Lynch

United States District Judge

ROBERT DIAZ ASSOCIATES ENTERPRISES, INC., Plaintiff, - against - ELETE, INC.; ELETE SPORTS COUTURE; ELETECOUTURE.COM; C. LAMONT SMITH; BRIAN HUEBSCH; TIM ALEXANDER; and CASTLE STUDIOS, Defendants.

03 Civ. 7758 (DFE)

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

2004 U.S. Dist. LEXIS 8620

May 13, 2004, Decided

May 14, 2004, Filed

DISPOSITION: [*1] Motion to dismiss denied in its entirety.

CASE SUMMARY

PROCEDURAL POSTURE: Plaintiff technology firm alleged that defendants, corporation, its owner, and its general counsel, wrongfully changed the password for the firm's account with an Internet Service Provider (ISP), hacked into the ISP's computer server, and copied the ISP's work product and trade secrets. The case was before a magistrate judge. The corporation, its owner, and its general counsel moved to dismiss for lack of personal jurisdiction and improper venue.

OVERVIEW: The corporation retained the firm to design and implement a website. Since the firm was located in New York and the corporation was located in Colorado, all of their contract negotiations occurred by telephone, by e-mail, and by facsimile. When the website was not completed by the completion date, the corporation terminated the contract. The firm alleged that without its consent, the corporation's general counsel contacted the firm's ISP and had the master password on the firm's account changed so that he could access all of the data stored by the firm on the servers. The court found that as to the first four causes of action, which alleged that the corporation, its owner, and its general counsel committed tortious acts outside New York that caused injury to the firm's property within New York, the court had personal jurisdiction over the corporation, its owner, and its general counsel on the basis of the N.Y. C.P.L.R. § 302(a)(3)(ii) because they derived substantial revenue from interstate commerce, and they should have expected that their actions would harm the firm in New York because that was where the firm's computer was physically located.

OUTCOME: The motion to dismiss for lack of personal jurisdiction and improper venue was denied in its entirety.

CORE TERMS: internet, website, com, personal jurisdiction, venue, password, eletecouture, telephone, e-mail, e-commerce, server, web, cause of action, phone, movants, site, work product, discovery, tortious, auction, waiting, fax, breach of contract, motion picture, transacted, copied, principal place of business, confer jurisdiction, general counsel, giving rise

LexisNexis(TM) Headnotes

Civil Procedure > Jurisdiction > Personal Jurisdiction & In Rem Actions > Personal Jurisdiction

Civil Procedure > Pleading & Practice > Defenses, Objections & Demurrers > Motions to Dismiss

[HN1]A plaintiff opposing a Fed. R. Civ. P. 12(b)(2) motion to dismiss for lack of personal jurisdiction bears the burden of establishing that the court has jurisdiction over the defendants. Prior to discovery, such a motion may be defeated if the plaintiff's complaint and affidavits contain sufficient allegations to establish a prima facie showing of jurisdiction. Moreover, the plaintiff's factual allegations are presumed to be true.

Civil Procedure > Jurisdiction > Personal Jurisdiction & In Rem Actions > Personal Jurisdiction

Civil Procedure > Pleading & Practice > Defenses, Objections & Demurrers > Motions to Dismiss

[HN2]In the context of a motion to dismiss for lack of personal jurisdiction, in diversity or federal question cases the court must look first to the long-arm statute of the forum state.

Civil Procedure > Jurisdiction > Personal Jurisdiction & In Rem Actions > Personal Jurisdiction

[HN3]See N.Y. C.P.L.R. § 302(a).

Civil Procedure > Jurisdiction > Personal Jurisdiction & In Rem Actions > Personal Jurisdiction

[HN4]When an unauthorized person "hacks" into a computer to access, copy or steal files, then personal jurisdiction may be established where the victim's computer is physically located.

Civil Procedure > Jurisdiction > Personal Jurisdiction & In Rem Actions > Personal Jurisdiction

[HN5]The acts that can subject a defendant to long-arm jurisdiction under N.Y. C.P.L.R. 302(a) may be performed by the defendant herself or through an agent. Whether a representative of the defendant qualifies as an agent for jurisdictional purposes does not turn on legalistic distinctions between being an agent or independent contractor. Furthermore, no showing of a formal relationship between the defendant and the agent is required. It is sufficient that the representative acted for the benefit of and with the knowledge and consent of the defendant and that he or she exercised some control over the agent in the matter.

Civil Procedure > Jurisdiction > Personal Jurisdiction & In Rem Actions > Personal Jurisdiction

[HN6]Under N.Y. C.P.L.R. § 302(a)(1), a plaintiff must show acts which give rise to the particular cause of action in question.

Civil Procedure > Venue > General Venue

[HN7]When the defendant is a corporation, the courts look to 28 U.S.C.S. § 1391(c) for purposes of venue. 28 U.S.C.S. § 1391(a) and (b) each state, inter alia, that venue is proper in a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred. Venue is a federal issue, and the federal courts are not bound by state statutes or case law in determining whether an event or omission has occurred" in the forum district.

COUNSEL: For Elete Sport Couture, Defendant: Hugh W. Campbell, LEAD ATTORNEY, Rodman and Campbell, P.C., Bronx, NY.

For Robert Diaz Associates Enterprises, Inc., Plaintiff: Jay R. McDaniel, LEAD ATTORNEY, Porzio, Bromberg & Newman, P.C., New York, NY.

JUDGES: DOUGLAS F. EATON, United States Magistrate Judge.

OPINIONBY: DOUGLAS F. EATON

OPINION: OPINION AND ORDER

DOUGLAS F. EATON, United States Magistrate Judge.

Plaintiff Robert Diaz Associates Enterprises, Inc. alleges that, in August 2003, the defendants wrongfully (a) changed the password for plaintiff's account at a company named Interland, Inc., and (b) hacked into Interland's computer servers and copied plaintiff's work product and trade secrets. Plaintiff seeks compensatory damages, punitive damages, attorneys fees, and a permanent injunction. It sues under the civil provisions of the Electronic Communications Privacy Act of 1986 (18 U.S.C. § 2707) and the Computer Fraud and Abuse Act of 1986 (18 U.S.C. § 1030). Also, under New York state law, plaintiff sues for conversion, misappropriation of trade secrets, and breach of contract. [*2]

On December 30, 2003, the parties consented to have this case assigned to me for all purposes pursuant to 28 U.S.C. § 636(c).

On January 8, 2004, the first five defendants (Elete, Inc., Elete Sports Couture, Eletecouture.com, C. Lamont Smith, and Brian Huebsch) moved to dismiss for lack of personal jurisdiction and improper venue. These five defendants are collectively referred to as the "Elete defendants."

On February 3, 2004, plaintiff served opposition papers. On February 20, the Elete defendants served a reply affirmation which annexed an affidavit.

I find personal jurisdiction over the Elete defendants, on the basis of the New York Civil Practice Law and Rules ("CPLR") § 302(a)(3)(ii), as to the first four Causes of Action, which allege tortious acts. I decline to dismiss the Fifth Cause of Action prior to discovery. I find that venue is proper in our District.

BACKGROUND

A. Plaintiff and the defendants as initially listed

Plaintiff Robert Diaz Associates Enterprises, Inc. ("RDA") is a New York corporation with its principal place of business in Manhattan. It is an information technology consulting firm that developed certain proprietary [*3] applications for the administration of web sites and for the operation of e-commerce enterprises (also called "proprietary back-end coding"). RDA operates an Internet consulting division, RDAOnline, based in New York City. RDAOnline provides customers with Internet web page design and applications. (Compl. P 3.)

Elete, Inc. ("Elete") is a Delaware Corporation with its corporate offices located in Denver, Colorado.

(12/18/03 Smith Aff. PP 4, 7.) Elete says that Elete Sports Couture and Eletecouture.com are trademarks of Elete. Elete says that it has not operated a business under either of these names, but that it does operate an Internet e-commerce site at eletecouture.com. (12/18/03 Smith Aff. P 5.) Elete sells sports apparel. (See eletecouture.com.)

C. Lamont Smith ("Smith") is the principal owner of Elete, Inc. (12/18/03 Smith Aff. 1.) P 1.) He signed the contract between RDA and Elete. (Exh. 2 to 2/3/04 Pl. Memo.)

Brian Huebsch ("Huebsch") says he is general counsel of Elete, Inc., Elete Sports Couture, and Eletecouture.com. (12/18/03 Huebsch Aff. P 1.)

Castle Studios ("Castle") is an unincorporated business entity that maintains its principal place of business in West Hollywood, [*4] California. It provides Internet services and consulting. (Compl. P 8.) Castle has not appeared in this action; it is unclear whether Castle has been served with the summons and complaint.

Tim Alexander ("Alexander") owns and operates Castle. Alexander acted as the agent of Huebsch and Elete during the time period in question. (Compl. P 8.) He was served with the summons and complaint in October 2003, but he has not yet made an appearance in our Court. If plaintiff wishes to move for a default judgment against Castle or Alexander, it must make the motion to Judge Berman and explain that Castle and Alexander have not consented under 28 U.S.C. § 636(c).

Interland, Inc. ("Interland") is a Minnesota corporation with its principal place of business in Atlanta, Georgia. It is RDA's Internet Service Provider. RDA stores electronic information on the servers maintained by Interland. (Compl. P 9.) Interland was dismissed from this lawsuit based on a binding arbitration provision contained in its contract with RDA. (Docket Item # 6.)

B. The contract between RDA and Elete

On March 24, 2003, Elete retained RDA to design and implement an Internet e-commerce website [*5] under the Internet address eletecouture.com. Elete planned to sell sports apparel on the website. (Compl. P 10.) RDA and Elete entered into a written contract on March 24, 2003. Since RDA is located in New York and Elete is located in Colorado, all of their contract negotiations, as well as the execution of the contract, occurred by telephone, by e-mail, and by facsimile. (12/18/03 Huebsch Aff. PP 8-11; 12/18/03 Smith Aff. PP 7-10.)

RDA argues that the contract was formed in New York, and that it was performed by RDA personnel in New York City. (Compl. P 11.) Elete, on the other

hand, argues that the contract was not negotiated or entered into in the State of New York, and that all of the activities in New York relating to [the] aforementioned contract were performed by the plaintiff. At no time did [the Elete defendants] intend to confer jurisdiction on the New York courts for any disputes arising out of this contract. (12/18/03 Huebsch Aff. PP 12-13; 12/18/03 Smith Aff. PP 11-12.) The contract contains no choice-of-law provision. The terms of the contract provided that: (1) RDA would design and develop numerous Internet web pages and e-commerce applications [*6] for the planned website; (2) RDA would retain ownership of the programming codes, but the text and graphical content would ultimately become Elete's property; and (3) Elete could cancel the contract at any time, provided that it paid RDA for the stages of the project on which RDA had begun work. (Compl. PP 10-11.)

The Elete defendants allege that RDA and Elete agreed to a completion date of May 31, 2003. "However, by the end of July, the website was not completed and as a result, Elete terminated the contract." (Def. Memo. p. 2.) But the contract's "Project Timeline" says, "delays by Elete in submission of PREREQUISITES will affect Delivery Dates Timeline on a day-to-day basis." (Pl. Memo. Exh. 2.) Moreover, e-mails exchanged between the parties show that, throughout the months of June and July, 2003, RDA was (1) waiting for Elete to send a video clip and photographs; (2) waiting for Elete to send more information for the news section; (3) waiting for Elete to decide how it wanted to run the video; (4) asked by Elete to make changes to the website, such as making the Customer Support, Contact Us, and Login and Registration areas "more like the Store Locator Section"; (5) asked by [*7] Elete to think of ways that RDA could incorporate two future lines that Elete wanted to add to the website; and (6) waiting for Elete to send updated and complete descriptions of all of Elete's products. (Pl. Memo. Exh. 3.)

C. The August 1, 2003 incident

RDA alleges that it substantially performed its obligations under the contract by August 1, 2003, and that it was owed \$ 24,889. (Compl. PP 12, 32.) However, on August 1, Huebsch sent RDA an e-mail that said: (1) the agreement was terminated for cause; (2) Elete's partial payments should be returned; and (3) RDA should immediately provide him with the passwords to the Interland servers that held RDA's work product. (Compl. P 12.)

The complaint further alleges as follows. Hours later and without RDA's knowledge or consent, Huebsch contacted Interland and convinced one of Interland's

technicians to change the master password on RDA's account, so that Huebsch could access all of the data stored by RDA on Interland's servers. (Compl. 13; see the 8:30 p.m. entries on Exh. 3 annexed to 2/3/04 Pl. Memo.) Huebsch then gave the password to Alexander, who had been hired by the Elete defendants to replace RDA. Alexander used the password [*8] to access RDA's computer files. Once inside the system, he copied all of the work RDA had completed for Elete, including the designs for the e-commerce web pages and RDA's proprietary back-end coding that RDA had developed for the eletecouture.com site. (Compl. PP 13-14.)

On either Saturday August 2 or Monday August 4, 2003, RDA discovered that its computer files had been accessed and copied. Moreover, RDA was unable to access its own files because it did not know the new password. (Compl. P 15; Pl. Memo. p. 3.) On August 8, 2003, the Elete website went online, using the RDA work product that had been stolen from RDA's files. (Compl. P 16.) For purposes of the present motion, the Elete defendants do not deny that the events occurred as described in the Complaint.

On March 25 and April 8, 2004, my law clerk accessed Elete's website. It said "Site Design By: Castle Studio web design," and "site built by: Castle Studio web design." A click on the Castle icon brought her to a screen that said: "Castle Studio/ Creative Pictures, Inc., Studio of Creative Director/ Photographer Tim Alexander." Plaintiff alleges that, by copying RDA's files, the defendants were able to access RDA's back-end [*9] coding, which is a "valuable trade secret of RDA," and were able to use RDA's work as their own. (Compl. PP 3, 14, 16, 27-29.)

DISCUSSION

[HN1]A plaintiff opposing a Rule 12(b)(2) motion to dismiss for lack of personal jurisdiction bears the burden of establishing that our Court has jurisdiction over the defendants. CNN, L.P. v. GoSMS.com, Inc., 2000 U.S. Dist. LEXIS 16156, 2000 WL 1678039, at *1 (S.D.N.Y. Nov. 6, 2000) (McKenna, J.), citing Metropolitan Life Ins. Co. v. Robertson-Ceco Corp., 84 F.3d 560, 566 (2d Cir. 1996). Prior to discovery, such a motion may be defeated if the plaintiff's complaint and affidavits contain sufficient allegations to establish a *prima facie* showing of jurisdiction. Id. Moreover, the plaintiff's factual allegations are presumed to be true. Cable News Network, 2000 U.S. Dist. LEXIS 16156, 2000 WL 1678039, at *1, citing, PDK Labs, Inc. v. Friedlander, 103 F.3d 1105, 1108 (2d Cir. 1997).

[HN2]"In diversity or federal question cases the court must look first to the long-arm statute of the forum

state, in this instance, New York." Bensusan Restaurant Corp. v. King, 126 F.3d 25, 27 (2d Cir. 1997).

CPLR § 302 says, [*10] in part:[HN3](a) ... As to a cause of action arising from any of the acts enumerated in this section, a court may exercise personal jurisdiction over any non-domiciliary, or his executor or administrator, who in person or through an agent: 1. transacts any business within the state or contracts anywhere to supply goods or services in the state; [or]

3. commits a tortious act without the state causing injury to person or property within the state, ... if he

(i) regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in the state, or

(ii) expects or should reasonably expect the act to have consequences in the state and derives substantial revenue from interstate or international commerce.

RDA argues that our Court has personal jurisdiction over the Elete defendants on three bases -- CPLR §§ 302(a)(1), and 302(a)(3)(i), and 302(a)(3)(ii). Four of the five Causes of Action are tort claims. Hence, I will first discuss § 302(a)(3).

CPLR § 302(a)(3). The first four Causes of Action clearly allege that the Elete defendants committed [*11] tortious acts outside New York causing injury to plaintiff's property within New York. Thus, New York has personal jurisdiction over the Elete defendants as to those four Causes of Action if plaintiff can satisfy either subsection 3(i) or 3(ii). It is conceivable that, with discovery, plaintiff might satisfy 3(i); I need not consider this because, on the current record, plaintiff has satisfied 3(ii).

The first question is whether the Elete defendants derive substantial revenue from interstate commerce. I find that the answer is yes, despite the fact that neither side submitted any evidence of the Elete defendants' total revenue from interstate or international commerce. It appears to be undisputed that (a) the Elete defendants received \$ 15,000 in revenue from Macy's New York store for a shipment of goods delivered to New York on or about December 1, 2003, and (b) as of February 3, 2004, that New York store was the only store in the nation that sold Elete's clothes, and (c) the Elete defendants also sell Elete's clothes from Colorado by means of the Internet. In Cable News Network, L.P. v. GoSMS.com, Inc., 2000 U.S. Dist. LEXIS 16156, 2000 WL 1678039, at *5

(S.D.N.Y. Nov. 6, 2000), Judge McKenna [*12] wrote: In this case, however, at oral argument, defendants admitted that GoSMS.com has earned \$ 60,000 in revenue from its operations in Europe and Israel ... Although the amount is not large, the Court recognizes that it is common for internet companies to be viewed as extremely successful despite the fact that they operate at a great loss. The important fact in this analysis is that GoSMS.com's operations are international and in no way limited to California. Similarly, in the case at bar, I find that Elete's operations are in no way limited to Colorado, and that the Elete defendants derive substantial revenue from interstate commerce.

I turn now to the second requirement, whether the Elete defendants should have expected that their actions would harm plaintiff in New York state. My own research shows that [HN4] when an unauthorized person "hacks" into a computer to access, copy or steal files, then personal jurisdiction may be established where the victim's computer is physically located. *U.S. v. Ivanov*, 175 F. Supp.2d 367, 371-73 (D. Conn. 2001). Although *Ivanov* was a criminal case, it was brought under 18 U.S.C. § 1030, [*13] the same statute invoked here in the Second Cause of Action. *Ivanov* was physically located in Russia when he committed the crimes. Judge Thompson wrote:

At the point *Ivanov* gained root access to OIB's computers, he had complete control over that data, and consequently, had possession of it. That data was in OIB's computers. Since *Ivanov* possessed that data while it was in OIB's computers in Vernon, Connecticut, the court concludes that he obtained it, for purposes of § 1030(a)(4), in Vernon, Connecticut. The fact that *Ivanov* is charged with obtaining OIB's valuable data by means of a complex process initiated and controlled from a remote location, and that he subsequently moved that data to a computer located in Russia, does not alter the fact that at the point when *Ivanov* first possessed that data, it was on OIB's computers in Vernon, Connecticut.

Id. at 371-72. In our case, it could be argued that Huebsch and Alexander stole plaintiff's property from Interland's server in Georgia. But their alleged conduct was clearly aimed at a victim located in New York. The defendants fraudulently induced Interland to give them the key to open RDA's New York computers; [*14] once inside RDA's computers, the defendants were able to take what they wanted and move it over the Internet to their own computers. Moreover, the reason they knew the contents would be valuable to them was that they had contracted with plaintiff and caused plaintiff to design those contents.

It is clear that Huebsch's tortious acts are properly imputed to the four other Elete defendants. The contract was signed by defendant Smith, the CEO of Elete, Inc. Huebsch's 12/18/03 affidavit says he is general counsel of Elete, Inc., Elete Sports Couture and Eletecouture.com.

In the Practice Commentaries to the McKinney's edition of CPLR § 302, Professor Vincent C. Alexander writes:

C302:4. Commission of Acts "Through an Agent."

[HN5] The acts that can subject a defendant to long-arm jurisdiction under CPLR 302(a) may be performed by the defendant herself or "through an agent." Whether a representative of the defendant qualifies as an agent for jurisdictional purposes does not turn on legalistic distinctions between being an agent or independent contractor. Furthermore, no showing of a formal relationship between the defendant and the agent is required. It is sufficient that the representative [*15] acted "for the benefit of and with the knowledge and consent of [the] defendant[] and that [he or she] exercised some control over [the agent] in the matter." *Kreutter v. McFadden Oil Corp.*, 1988, 71 N.Y.2d 460, 467, 527 N.Y.S.2d 195, 199, 522 N.E.2d 40, 44 (nondomiciliary held to have transacted business in New York (CPLR 302(a)(1)) through corporation over which, in his position as officer and owner of affiliated company, he exercised "some control").

On the current state of the record, I find that Smith and the three non-individual movants exercised some control over Huebsch and Alexander, and knew that Huebsch and Alexander were committing the alleged tortious acts for the benefit of Smith and the three non-individual movants.

Finally, it would not offend traditional notions of fair play and substantial justice for our Court to exercise jurisdiction over all five movants on the first four Causes of Action. See Judge Koeltl's thorough discussion of the due process case law in *Landau v. New Horizon*, 2003 U.S. Dist. LEXIS 15999, 2003 WL 22097989, at *8-10 (S.D.N.Y. Sept. 8, 2003).

I now turn to the one non-tort claim, the Fifth Cause of Action for breach of contract. [*16]

CPLR § 302(a)(1). RDA argues:

In the manner in which Elete contracted with RDA and supervised RDA's activities in minute detail, it transacted business in New York sufficient to confer jurisdiction under CPLR 302(a)(1). Moreover, as an e-commerce business that solicits business in New York and sells its goods through an "exclusive" outlet at Macy's, it is likely that Elete is subject to general

jurisdiction in this state and may be sued for any purpose [] se.

(Pl. Memo. p. 7.) To sue Elete for any purpose, on any cause of action, plaintiff would have to show something that it has concededly not yet shown: that Elete was regularly doing business in New York within the meaning of CPLR § 301. [HN6] Under § 302(a)(1), plaintiff must show acts which give rise to the particular cause of action in question. The Fifth Cause of Action alleges breach of contract and seeks \$ 24,889 allegedly due for services rendered to Elete. This cause of action does not arise from Elete's sales of goods through Macy's. Nor does it arise from any subsequent use of the e-commerce site by Elete to sell goods to New Yorkers. Relevant to the Fifth Cause of Action, RDA merely asserts that (1) the Elete [*17] defendants were aware that the contract would be performed (on RDA's part) in New York, and (2) the Elete defendants, from Colorado, constantly supervised RDA's work in New York through telephone communications, facsimiles, and e-mails. (Pl. Memo. pp. 2, 7-11 and Exh. 5.)

The Elete defendants argue that they cannot be deemed to have engaged in the New York activities that were actively performed by plaintiff. Worldwide Futgol Assocs., Inc. v. Event Entertainment, Inc., 983 F. Supp. 173, 177 (E.D.N.Y. 1997) (Dearie, J.); J.E.T. Advertising Associates, Inc. v. Lawn King Inc., 84 A.D.2d 744, 745, 443 N.Y.S.2d 745, 747 (2d Dept. 1981). I agree with the Elete defendants on this point, although I have found a contrary dictum in Geller Media Management, Inc. v. Beaudreault, 910 F. Supp. 135, 137-38 (S.D.N.Y. 1996) (Leisure, J.).

It seems to be undisputed that the Elete defendants' contacts with plaintiff were entirely by telephone, e-mail and fax from outside New York.

Plaintiff cites Parke-Bernet Galleries, Inc. v. Franklyn, 26 N.Y.2d 13, 256 N.E.2d 506, 308 N.Y.S.2d 337 (1970). The New York Court of Appeals held that [*18] the California defendant was subject to personal jurisdiction in New York when he placed bids at the New York plaintiff's auction by mail, and by telephone, and through an agent attending the auction. The Parke-Bernet case is distinguishable from the case at bar. First, defendant's agent was actually attending the auction in New York. Second, the Elete defendants' telephone calls, faxes and e-mails were made solely to ensure compliance with the contract terms, and to provide plaintiff with the information it needed to produce the website. By contrast, in the Parke-Bernet case the California defendant's actions affected not only Parke-Bernet, but the other participants in the New York auction who were bidding against him.

My own research shows the following. In Roper Starch Worldwide, Inc. v. Reymer & Associates, Inc., 2 F. Supp.2d 470 (S.D.N.Y. 1998), Judge Parker (then a District Judge) held: In order to base jurisdiction on § 302(a)(1), phone calls and mailings must serve to "project" a defendant into New York in such a manner that the defendant "purposefully avails himself" of the protections and benefits of New York Law ... Phone calls that seek [*19] to insure fulfillment of contract terms do not "project" a defendant into a state sufficiently to confer jurisdiction ... Here, plaintiff has offered no evidence to rebut defendant's contention that the "several" telephone calls defendant made were solely to ensure compliance with the contract terms, stating through [plaintiff's employee] that the conference calls were "to discuss changes to the work after the preliminary tabulations were completed." Defendant's phone calls into New York do not suffice to confer personal jurisdiction under § 302(a)(1). 2 F. Supp.2d at 474 (internal citations omitted).

But in Serendip LLC v. Franchise Pictures LLC, 2000 U.S. Dist. LEXIS 12946, 2000 WL 1277370 (S.D.N.Y. Sept. 7, 2000) (Baer, J.), the non-resident defendants hired the New York plaintiff to compose a musical score for their motion picture. The defendants (1) solicited the plaintiff's services by telephone, (2) initiated numerous telephone calls with her to "discuss the music for the film and [to give] her directions on how to proceed," and (3) periodically sent her video tapes of the film to work with. 2000 U.S. Dist. LEXIS 12946, 2000 WL 1277370, at 5. Judge Baer held: In Agency Rent A Car Sys., Inc. v. Grand Rent A Car Corp., 98 F.3d 25, 29 (2d Cir. 1996), [*20] the Second Circuit concluded that "the [defendants'] contacts with New York have been ... anything but temporary, random, or tenuous. Rather, they have been continual, repetitive, and essential to the [defendants'] businesses." Id. Here too, the plaintiff has alleged that Battlefield contracted for the services of the composer in order to supply an essential element of their motion picture: the soundtrack. And that motion picture was produced with the intention that it be distributed in New York and elsewhere.

... I find that Serendip has made a prima facie showing of personal jurisdiction over the Battlefield entities and Don Carmody. The facts alleged by plaintiff indicate that Battlefield has "purposefully avail[ed] [itself] of the privilege of conducting activities within [New York], thus invoking the benefits and protections of its laws," and has therefore "transacted business" in New York within the meaning of § 302(a)(1).

Serendip, 2000 U.S. Dist. LEXIS 12946, 2000 WL 1277370 at *5.

However, one year later, Judge Baer reached a different conclusion. See Ljungkvist v. Rainey Kelly Campbell Roalfe/Young & Rubicam, Ltd., 2001 U.S. Dist. LEXIS 16894, 2001 WL 1254839 (S. [*21] D.N.Y. Oct. 19, 2001). In Ljungkvist, the non-resident defendant hired the New York plaintiff to create artwork for a London advertising campaign. Judge Baer held that there was no personal jurisdiction, even though (1) the parties exchanged several faxes regarding the artwork, including faxes containing the defendant's written comments on the sketches, and (2) the parties spoke on the phone at least once every day for a 10-day period. Judge Baer ruled that those "correspondences did not project the defendants into local commerce." 2001 U.S. Dist. LEXIS 16894, 2001 WL 1254839, at *3.

Plaintiff also cites Pilates, Inc. v. Pilates Institute, Inc., 891 F. Supp. 175, 179 (S.D.N.Y. 1995); Citigroup Inc. v. City Holding Co., 97 F. Supp.2d 549, 564 (S.D.N.Y. 2000); and Hsin Ten Enterprises USA, Inc. v. Clark, 138 F. Supp.2d 449, 456 (S.D.N.Y. 2000). But those cases involved trademark and patent infringement, which is not alleged here. (Where a defendant (a) deliberately targets New York residents to receive its products and (b) passes off its products as those of the plaintiff, courts will apply CPLR § 302(a)(1) or § 302(a)(2) against the infringer [*22] even if he projected himself into New York only by phone and/or mail. Pilates, 891 F. Supp. at 179, 182.)

More on point are Armouth International, Inc. v. Haband Co., Inc., 277 A.D.2d 189, 715 N.Y.S.2d 438 (2d Dept. 2000), and Ainbinder v. Potter, 282 F. Supp.2d 180, 189-90 (S.D.N.Y. 2003) (Koeltl, J.).

It is possible that discovery may elicit facts showing jurisdiction over the Fifth Cause of Action. Since the lawsuit will proceed on the first four Causes of Action, I decline to dismiss the Fifth Cause of Action at this early stage.

Venue

[HN7] Since Elete, Inc. is a corporation, we look to 28 U.S.C. § 1391(c) for purposes of venue. I find that Elete, Inc.'s contacts within the Southern District of New York "would be sufficient to subject it to personal jurisdiction if that district were a separate State." Therefore, § 1391(c) deems the corporation to reside in our judicial district. However, § 1391(c) does not apply to the four non-corporate movants. The first two Causes of Action are based on federal-question jurisdiction; the others are based on diversity of citizenship. We must look to both subsections [*23]

(a) and (b) of § 1391 to determine venue as to the four non-corporate movants.

Subsections (a) and (b) each state, *inter alia*, that venue is proper in a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred,

...

Venue is a federal issue, and the federal courts are not bound by New York statutes or case law in determining whether an event or omission has "occurred" in the forum district. The Second Circuit has ruled on the same language quoted above:

As held by the district court, the charter party giving rise to Titan's claim and the purported "ad hoc" arbitration agreement giving rise to Zhen Hua's defense were negotiated between China and Pelham, New York via Connecticut. That many of Zhen Hua's communications reached Titan's offices in New York through the Connecticut brokers does not alter the fact that Zhen Hua directed communications to New York. Accordingly, venue in the Southern District of New York was proper ... Sacody Techs., Inc. v. Avant, Inc., 862 F. Supp. 1152, 1157 (S.D.N.Y. 1994) ("The standard set forth in § 1391(a)(2) [which employs the 'substantial part language, [*24]] may be satisfied by a communication transmitted to or from the district in which the cause of action was filed, given a sufficient relationship between the communication and the cause of action.").

U.S. Titan, Inc. v. Guangzhou Zhen Hua Shipping Co., Ltd., 241 F.3d 135, 153-54 (2d Cir. 2001) (brackets in the original).

Sacody was also cited with approval in TBV Holdings Ltd. v. Schey, 2002 U.S. Dist. LEXIS 13682, 2002 WL 1733649 (S.D.N.Y. July 26, 2002) (Jones, J.), and Ainbinder v. Potter, 282 F. Supp.2d 180, 190 n. 9 (S.D.N.Y. 2003) (Koeltl, J.).

In the case at bar, three events gave rise to the claims in each of the five Causes of Action:

Event 1: Defendant Smith, as CEO of Elete, Inc., signed a contract in Colorado and faxed it to plaintiff in Manhattan, thus causing the plaintiff to expend efforts in Manhattan to design a website for the Elete defendants.

Event 2: After many e-mails to Manhattan, defendant Huebsch, as General Counsel for the Elete defendants, sent an e-mail to plaintiff in Manhattan demanding that plaintiff provide him with the passwords to the Interland servers that held plaintiff's work product.

Event 3: A few hours [*25] later, Huebsch contacted Interland in Georgia, fraudulently changed plaintiff's

password, and then gave it to Alexander in order to open plaintiff's computers in Manhattan.

Events 1 and 2 have a close relationship with Event 3. Event 1 caused the creation, in Manhattan, of the property which was later stolen, from Manhattan.

Accordingly, I find that venue in our District is proper as to all five of the moving defendants.

CONCLUSION

I deny the motion (Docket Item # 10) in its entirety. I direct the attorneys to place a conference call to my Chambers (212-805-6175) to schedule an Initial Case Management Conference.

DOUGLAS F. EATON

United States Magistrate Judge

Dated: May 13, 2004

MADISON MODELS, INC., Plaintiff, -v- LAETITIA CASTA, FINTAGE TALENT B.V., FINTAGE HOUSE, and DOMINIQUE CASTA, Defendants.

No. 01 Civ. 9323 (LTS)(THK)

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

2003 U.S. Dist. LEXIS 14844

August 20, 2003, Decided

August 21, 2003, Filed

DISPOSITION: Motion to dismiss granted as to some defendants.

CASE SUMMARY

PROCEDURAL POSTURE: Plaintiff modeling agency brought the instant asserting breach of contract and conversion of funds, against defendant agencies and a model and her father. Defendants moved to dismiss.

OVERVIEW: In consideration of the model agency's services to the agency's alleged predecessor and in accordance with an agreement reached by the parties the modeling agency was entitled to receive 33 1/3 percent of all fees earned by the model, out of the gross fees received by the model, her father and/or entities working on their behalf. The modeling agency alleged that defendants wrongfully terminated the agency agreement. The court held that the modeling agency's allegations were insufficient to make out a prima facie case for personal jurisdiction over the model and/or the agency pursuant to the state long arm statute. The modeling agency did not proffer allegations or evidence of a contract by any of the moving defendants to supply goods or services in New York, nor did the activities cited constitute the transaction of business. Mere promotion via a website was insufficient to constitute transacting business within the meaning of the long-arm statute. The agency's website was not even alleged to be "interactive" in the relevant sense: there is no allegation or proffer that the agency did business over its website by allowing customers to purchase items or services on-line.

OUTCOME: The defendants' motion to dismiss was granted.

CORE TERMS: personal jurisdiction, motion to dismiss, website, entity, prima facie case, conversion, lack of personal jurisdiction, services rendered, exercise of jurisdiction, general jurisdiction, discovery, invoice, exercise of personal jurisdiction, exercise personal jurisdiction, sufficient to support, breach of

contract, causes of action, doing business, jurisdictional, solicitation, proffered, unrelated, proffer, cause of action, agency agreement, tortious act, predecessor, failure to state a claim, insufficient to support, consent to jurisdiction

LexisNexis(TM) Headnotes

Civil Procedure > Jurisdiction > Personal Jurisdiction & In Rem Actions > Personal Jurisdiction

[HN1]A federal court sitting in diversity jurisdiction may exercise personal jurisdiction to the same extent as courts of general jurisdiction in the state in which it sits. Federal courts sitting in New York thus engage in a two-step analysis, examining first whether New York law would support the exercise of personal jurisdiction and, if so, turning to the question of whether New York's extension of jurisdiction would, under the circumstances, be permissible under the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

Civil Procedure > Pleading & Practice > Defenses, Objections & Demurrers > Motions to Dismiss

[HN2]A plaintiff opposing a motion to dismiss under Fed. R. Civ. P. 12(b)(2) for lack of personal jurisdiction has the burden of establishing that the court has jurisdiction over the defendant. Where no discovery has been had and no evidentiary hearing held, a plaintiff can satisfy its burden by making allegations sufficient to establish a prima facie case for the exercise of jurisdiction. All such allegations are taken as true for purposes of determination of the motion and all inferences are drawn in favor of the plaintiff.

Civil Procedure > Jurisdiction > Personal Jurisdiction & In Rem Actions > Personal Jurisdiction

[HN3]N.Y.C.P.L.R. art. 301 permits New York courts to exercise general jurisdiction over a corporation that is "doing business" in the state. The "doing business"

standard is a stringent one because a corporation which is amenable to a court's general jurisdiction may be sued in New York on causes of action wholly unrelated to the acts done in New York. The rule is that a corporation is "doing business" and is therefore "present" in New York if it does business in New York not occasionally or casually, but with a fair measure of permanence and continuity. The United States Court of Appeals for the Second Circuit has explained the "doing business" standard by stating that it requires a showing of continuous, permanent, and substantial activity in New York.

Civil Procedure > Jurisdiction > Personal Jurisdiction & In Rem Actions > Personal Jurisdiction

[HN4]New York courts have held that, while the mere solicitation of business in New York does not constitute "doing business" for jurisdictional purposes in New York by a corporation, activities of substance in addition to solicitation do.

Civil Procedure > Jurisdiction > Personal Jurisdiction & In Rem Actions > Personal Jurisdiction

[HN5]See N.Y.C.P.L.R. art. 302(a).

Civil Procedure > Jurisdiction > Personal Jurisdiction & In Rem Actions > Personal Jurisdiction

[HN6]Jurisdiction under the long arm provisions is "qualitative rather than quantitative," and a single transaction is sufficient to support personal jurisdiction as long as the defendant's activities were purposeful and there is a substantial nexus between the activities and the claim.

Civil Procedure > Jurisdiction > Personal Jurisdiction & In Rem Actions > Personal Jurisdiction

[HN7]For jurisdictional analysis, courts look at "the totality of circumstances" in determining whether a party has "transacted business" under N.Y.C.P.L.R. art. 302(a)(1), including the following: (1) whether a defendant has an ongoing contractual relationship with a New York corporation; (2) whether the contract is negotiated or executed in New York; (3) whether the contract contains a New York choice-of-law, forum-selection or consent to jurisdiction clause; and (4) whether the contract requires notices or payments to be sent to New York or requires supervision by the corporation in New York.

Civil Procedure > Jurisdiction > Personal Jurisdiction & In Rem Actions > Personal Jurisdiction

[HN8]A finding of personal jurisdiction is not warranted based on maintenance of the website.

Civil Procedure > Jurisdiction > Personal Jurisdiction & In Rem Actions > Personal Jurisdiction

[HN9]N.Y.C.P.L.R. art. 302(a)(2), (a)(3) premise the exercise of jurisdiction, respectively, on the commission of a tort within New York state or outside New York state where the act causes injury within the state, where certain commercial criteria are met.

Civil Procedure > Jurisdiction > Personal Jurisdiction & In Rem Actions > Personal Jurisdiction

[HN10]In order to satisfy N.Y.C.P.L.R. art. 302(a)(3), a plaintiff has to aver facts constituting a tort under the law of the pertinent jurisdiction. In order to maintain an action for conversion - the only tort alleged -, a plaintiff must allege legal ownership or immediate superior right of possession to property and defendant's unauthorized interference with plaintiff's ownership or possession of such property.

Civil Procedure > Jurisdiction > Personal Jurisdiction & In Rem Actions > Personal Jurisdiction

[HN11]Jurisdictional discovery is inappropriate where a plaintiff has failed entirely even to allege facts from which a court properly can infer the existence of jurisdiction.

COUNSEL: [*1] For Plaintiff: HANTMAN & ASSOCIATES, By: Robert J. Hantman, Esq., New York, New York.

For Defendant Dominique Casta: SALANS, By: Kenneth W. Taber, Esq., Jane E. Manning, Esq., New York, New York.

For Defendants: Fintage Talent B.V. and Fintage House: McELROY, DEUTSCH & MULVANEY, LLP, By: Daniel F. Markham, Esq., New York, New York.

JUDGES: LAURA TAYLOR SWAIN, United States District Judge.

OPINIONBY: LAURA TAYLOR SWAIN

OPINION: MEMORANDUM OPINION AND ORDER

Madison Models, Inc. ("Plaintiff" or "Madison") brings this action, asserting causes of action for breach of contract and conversion of funds, against Fintage Talent B.V. ("FT"), Fintage House ("FH" and, with FT, "Fintage") and Dominique Casta ("DC")

(collectively "Moving Defendants"), as well as against Laetitia Casta ("LC"). This matter comes before the Court on the Moving Defendants' motions to dismiss the complaint pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure for lack of personal jurisdiction. DC has also moved for dismissal of the complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief may be granted.

Plaintiff asserts that the Court has [*2] jurisdiction of this matter pursuant to 28 U.S.C. section 1332.

The Court has considered thoroughly all submissions related to these motions. For the following reasons, the motion to dismiss for lack of personal jurisdiction is granted as to the Moving Defendants. Given the Court's disposition of the Rule 12(b)(2) aspect of the instant motion practice, the Court will not address DC's motion to dismiss the complaint pursuant to Rule 12(b)(6).

FACTS

The following facts are alleged in the Complaint. Plaintiff is a corporation organized on or about October 3, 1997 under the laws of the State of New York with its principal office located in New York, New York. (Compl. P 5.) Plaintiff is affiliated with Madison Models Paris and is in the business of providing managerial and professional services for models. (Id. P 6.) n1 FT and FH (which Plaintiff refers to collectively as "Fintage" throughout its complaint and papers in connection with this motion) are "a" (sic) Netherlands limited liability company (with a principal place of business in the Netherlands and offices in "Hungary, Australia, Japan, Spain and... Tennessee") that "prepared invoices for and on [*3] behalf of defendant LC for services rendered by her for Victoria's Secret." (Id. PP 15-16.) Fintage is a subsidiary of Meespierson Company; "both" (sic) "do business within the Southern District of New York." (Id. P 18.) Defendant Dominique Casta is father to and purported agent of Defendant Laetitia Casta and resides in France. n2 (Id. P 19.)

----- Footnotes -----

n1 The November 22, 2002 affidavit of Veronique Tuil, submitted by Plaintiff in opposition to DC's motion to dismiss the complaint, identifies Madison Models SA as a French corporation that is the parent company of Plaintiff Madison. (Id. at P 1.)

n2 Laetitia Casta has not moved to dismiss the complaint.

----- End Footnotes -----

In consideration of Plaintiff Madison's services to FH's alleged predecessor LC and/or Fintage, and in accordance with an agreement reached on or about June 11, 1998, Madison was entitled to receive 33 1/3% of all fees earned by LC for Victoria's Secret modeling assignments and/or campaigns in the United States, out of the gross fees received [*4] by LC, DC and/or entities working on their behalf. (Id. P 20.) It was expressly agreed that Fintage would invoice Victoria's Secret directly, and then, out of the gross amount received, Fintage would be responsible for making wire transfers to "Madison New York" (presumably, the Plaintiff entity) for the agreed-upon commissions upon receipt of an invoice from Plaintiff (Id. P 21.)

Plaintiff alleges that, on or about March 1, 2001, Defendants wrongfully terminated the agency agreement between Fintage and Madison SA (Paris) as of June 1, 2001, without cause and in breach of previously existing promises, commitments and obligations. In spite of repeated requests by Madison, no additional monies have been paid. (Id. PP 23, 24.) The termination of the agency agreement was in breach of, inter alia, the obligation of all defendants to "pay outstanding commission payments to plaintiff Madison in New York, for services rendered by LC in the United States." (Id. P 23.) The Complaint does not, however, allege that plaintiff Madison was a party to this agency agreement.

The Complaint asserts eight causes of action. In the First, which alleges breach of a contract to pay commissions [*5] for services rendered by Madison "for 1999," Plaintiff alleges that the 33 1/3% commission was provided for in a written agreement between plaintiff and a Fintage predecessor, and that LC was "working as an employee of first Belstar [(the predecessor)] and then Fintage." (Id. PP 27-29) The Second Cause of Action alleges breach of a contract to pay commissions for services rendered by plaintiff "for 2000," and incorporates by reference the preceding allegations. (Id. PP 31-33). The Third alleges, on the same basis, breach of contract to pay commissions for services "for 2001," and the Fourth the same as to 2002. (Id. PP 34-39.) The Fifth alleges that "defendants" wrongfully terminated "their [sic] contracts with Madison S.A. and Madison." (Id. PP 40-42.) In the Sixth, Plaintiff alleges that it rendered services "for Defendants" and that "Defendants" have been unjustly enriched by reason of nonpayment of commissions to Plaintiff. (Id. PP 44-48.) In the Seventh, Plaintiff alleges that "Defendants" are liable for conversion by reason of failure "to pay and

distribute monies to Plaintiff as outlined herein" (Id. PP 49-51), and in the Eighth Plaintiff asserts [*6] a need for provisional remedies. (Id. PP 52-55.)

DISCUSSION

Motion to Dismiss Pursuant to Rule 12(b)(2)

[HN1]A federal court sitting in diversity jurisdiction may exercise personal jurisdiction to the same extent as courts of general jurisdiction in the state in which it sits. See Bank Brussels Lambert v. Fiddler Gonzalez & Rodriguez, 305 F.3d 120, 124 (2d Cir. 2002); Fed. R. Civ. P. 4(k)(1)(A). Federal courts sitting in New York thus engage in a two-step analysis, examining first whether New York law would support the exercise of personal jurisdiction and, if so, turning to the question of whether New York's extension of jurisdiction would, under the circumstances, be permissible under the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States. Bank Brussels Lambert, 305 F.3d at 124.

[HN2]A plaintiff opposing a motion to dismiss under Rule 12(b)(2) for lack of personal jurisdiction has the burden of establishing that the court has jurisdiction over the defendant. Bank Brussels Lambert v. Fiddler Gonzalez & Rodriguez, 171 F.3d 779, 784 (2d Cir. 1999). Where, as here, no discovery has been [*7] had and no evidentiary hearing held, the plaintiff can satisfy its burden by making allegations sufficient to establish a prima facie case for the exercise of jurisdiction. All such allegations are taken as true for purposes of determination of the motion and all inferences are drawn in favor of the plaintiff. See In re Sumitomo Copper Litigation, 120 F. Supp. 2d 328, 335 (S.D.N.Y. 2000); Cornell v. Assicurazioni Generali S.p.A., 2000 U.S. Dist. LEXIS 2922, No. 97 Civ. 2262 (MBM), No. 98 Civ. 9186 (MBM), 2000 WL 284222 at *1 (S.D.N.Y. March 16, 2000).

As a threshold matter, Plaintiff argues that the Court should deem all of the Defendants alter egos of each other for purposes of determining whether the complaint should be dismissed as to any of them for lack of personal jurisdiction. See Pl.'s Mem. in Opp'n to Mot. to Dismiss at 18-20. Plaintiff has not cited, and the Court is not aware of any, authority for application of an alter ego or veil-piercing analysis for this purpose outside of the corporate context. Nor has Plaintiff even alleged any facts tending to show that Defendants acted as a single entity in connection with the matters complained of. The Court [*8] will, accordingly, analyze Plaintiff's jurisdictional contentions as to each Moving Defendant separately.

CPLR Section 301

Plaintiff asserts that the Court is authorized to exercise personal jurisdiction over defendants DC and Fintage by [HN3]New York CPLR section 301, which permits New York courts to exercise general jurisdiction over a corporation that is "doing business" in the state. See N.Y.C.P.L.R. § 301 (McKinney 2001); Jacobs v. Felix Bloch Erben Verlag fur Buhne Film und Funk KG, 160 F. Supp. 2d 722, 731 (S.D.N.Y. 2001). "The 'doing business' standard is a stringent one because a corporation which is amenable to the Court's general jurisdiction 'may be sued in New York on causes of action wholly unrelated to the acts done in New York.' . . . The rule is that 'a corporation is 'doing business' and is therefore 'present' in New York . . . if it does business in New York 'not occasionally or casually, but with a fair measure of permanence and continuity.'" Jacobs, 160 F. Supp. 2d at 731. The Second Circuit has explained the "doing business" standard by stating that it "requires a showing of 'continuous, permanent, and substantial activity [*9] in New York.'" Id. (quoting Wiwa v. Royal Dutch Petroleum Co., 226 F.3d 88, 95 (2d Cir. 2000)).

[HN4]New York courts have, however, held that, while the mere solicitation of business in New York does not constitute "doing business" in New York by a corporation, "activities of substance in addition to solicitation" do. Laufer v. Ostrow, 55 N.Y.2d 305, 310, 449 N.Y.S.2d 456, 434 N.E.2d 692 (N.Y. 1982). In support of its claim of CPLR 301 jurisdiction over Fintage, n3 Plaintiff asserts that LC's New York alleged activities (including entry into the Victoria's Secret contract in New York, obtaining a visa through plaintiff Madison, earning income through work for Victoria's Secret (a New York-based company) on which the subject commissions were to be paid, rendering modeling services in New York, working with New York photographers, being party to the VS contract, which contains New York choice of law and consent to jurisdiction provisions, and appearing in magazines published in New York) are attributable to Fintage based on Plaintiff's general allegation that LC was an employee of Fintage. (See Decl. of Robert Hantman ("Hantman Decl.") at PP 7-8.) [*10] Most, if not all, of the activities cited by Plaintiff relate to LC's entry into and performance of the contract with Victoria's Secret. A copy of the contract is appended to the Hantman Declaration as Exhibit B ("VS Contract"). This December 24, 1998 contract names as parties only LC and Victoria's Secret entities, and includes representations that LC has the exclusive right to enter into the agreement and is the only party entitled to receive remuneration thereunder. (VS Contract at opening paragraph and §§ 5.4, 6.3; see also id. at §§ 5.3, 6.8.) In light of the specific provisions of the contract proffered by Plaintiff, general allegations that

LC performed the activities as an employee of Fintage are insufficient to support a reasonable inference that the activities were so undertaken. Accordingly, the Court does not impute LC's activities to Fintage for purposes of evaluating whether Plaintiff has proffered allegations sufficient to make a prima facie case for the exercise of personal jurisdiction over either of the Fintage entities.

----- Footnotes -----

n3 In making its jurisdictional arguments, Plaintiff does not distinguish between FH and FT, arguing that further discovery would be necessary to make differentiations as to the roles played by each. For purposes of this motion, the Court construes Plaintiffs factual allegations regarding "Fintage" to have been made as against each of FH and FT separately.

----- End Footnotes -----

[*11]

Plaintiff also asserts that FH's admission that its representatives "travel to New York approximately twice a year regarding new or potential business for its subsidiaries," documentation indicating that FH was involved in a 1999 release of funds to a Brooklyn, New York, bank account maintained by an entity, Seagal-Nasso, which is unrelated to the transactions that are the subject of the instant complaint, evidence that FH sent marketing materials to Seagal-Nasso, n4 and a website allegedly indicating that Fintage has an office "in the United States," are sufficient to support a finding of general personal jurisdiction over one or both Fintage entities pursuant to section 301 of the CPLR. See, e.g., Hantman Dec. at PP 10-18. These alleged contacts are plainly insufficient to meet Plaintiffs burden of showing continuous, permanent and substantial activity in New York, nor do they show activities of substance in New York in addition to solicitation. Plaintiff has thus failed to sustain its burden as to Fintage with respect to CPLR section 301 jurisdiction.

----- Footnotes -----

n4 The Court notes that, while Plaintiffs papers argue that the Seagal-Nasso correspondence is plainly indicative of marketing and related activities in New York, fax cover sheets included in Plaintiffs exhibits indicate that the

communications were faxed within Los Angeles and between Los Angeles and the Netherlands. See Exhibit C to Hantman Decl.

----- End Footnotes -----

[*12]

Plaintiff has failed entirely to proffer factual allegations supporting the exercise of general personal jurisdiction over defendant DC pursuant to section 301 of the CPLR. It has therefore failed to make a prima facie showing of general section 301 jurisdiction over DC.

Long-Arm Jurisdiction CPLR § 302(a)

Plaintiff also asserts that the Court is authorized to exercise personal jurisdiction over Moving Defendants by the following provisions of [HN5]New York CPLR section 302(a), which, in relevant part, permit New York courts to exercise jurisdiction, as to "a cause of action arising from any of the acts enumerated in this section," over any "non-domiciliary, or his executor or administrator, who in person or through an agent": 1. transacts any business within the state or contracts anywhere to supply goods or services in the state; or

2. commits a tortious act within the state, except as to a cause of action for defamation of character arising from the act; or

3. commits a tortious act without the state causing injury to person or property within the state, except as to a cause of action for defamation of character arising from the act, if he (i) regularly [*13] does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in the state, or (ii) expects or should reasonably expect the act to have consequences in the state and derives substantial revenue from interstate or international commerce...N.Y.C.P.L.R. § 302 (McKinney 2001). [HN6] Jurisdiction under the long arm provisions is "qualitative rather than quantitative," and a single transaction is sufficient to support personal jurisdiction as long as the defendant's activities were purposeful and there is a substantial nexus between the activities and the claim. See Agency Rent A Car System v. Grand Rent A Car Corp., 98 F.3d 25, 31 (2d Cir. 1996); Jerge v. Potter, 2000 U.S. Dist. LEXIS 11648, No. 99 Civ. 031 2E(F), 2000 WL 1160459 (W.D.N.Y. Aug. 11, 2000).

[HN7] Courts look at "the totality of circumstances" in determining whether a party has "transacted business" under section 302(a)(1), including the following: (1)

whether the defendant has an ongoing contractual relationship with a New York corporation; (2) whether the contract was negotiated or executed in New York; (3) [*14] whether the contract contains a New York choice-of-law, forum-selection or consent to jurisdiction clause; and (4) whether the contract requires notices or payments to be sent to New York or requires supervision by the corporation in New York. ESI, Inc. v. The Coastal Corp., 61 F. Supp. 2d 35, 57 (S.D.N.Y. 1997).

Plaintiff asserts that Fintage transacted business in New York State when it advertised its services on its website, sent representatives to New York twice a year, sent invoices on LC's behalf to Victoria's Secret, wired money into Plaintiff's account and conducted the above-described dealings with Seagal-Nasso. Plaintiff further alleges that Fintage directly or indirectly wired money to Madison's New York bank in connection with LC's Victoria's Secret work. Plaintiff asserts that the exercise of jurisdiction over DC pursuant to section 302(a)(1) is appropriate because DC professes to have led the negotiations with Victoria's Secret. Plaintiff admits, however, that the Victoria's Secret negotiations took place in Paris. (Tuil Dec. at P 6.)

Plaintiff's allegations are insufficient to make out a prima facie case for personal jurisdiction over DC [*15] and/or Fintage pursuant to CPLR section 301(a)(1). Plaintiff has not proffered allegations or evidence of a contract by any of the Moving Defendants to supply goods or services in New York, nor do the activities cited constitute the transaction of business relevant to the claim Plaintiff asserts here. Plaintiff acknowledges that the Seagal-Nasso dealings are entirely unrelated to the Casta service and commission issues. Mere promotion via a website is insufficient to constitute transacting business within the meaning of the statute. Fintage's website is not even alleged to be "interactive" in the relevant sense: there is no allegation or proffer that Fintage does business over its website by allowing customers to purchase items or services on-line. [HN8] A finding of personal jurisdiction thus is not warranted based on maintenance of the website. See Hsin Ten Enter. v. Clark Enter., 138 F. Supp. 2d 449, 456 (S.D.N.Y. 2000) (websites that permit viewers to purchase devices online and are "highly interactive" generally support a finding of personal jurisdiction over the defendant). Nor is there any allegation that Fintage's representatives' twice-yearly visits to New York [*16] have anything to do with Casta or Madison. Furthermore, none of the Moving Defendants is a party to the VS Contract which was, in any event, negotiated outside New York. Plaintiff's proffer is thus insufficient to support a prima facie case for the exercise of jurisdiction under CPLR section 302(a)(1).

[HN9] CPLR sections 302(a)(2) and 302(a)(3) premise the exercise of jurisdiction, respectively, on the commission of a tort within New York state or outside New York state where the act causes injury within the state, where certain commercial criteria are met. Section 302(a)(2) is irrelevant because none of the Moving Defendants is alleged to have committed a tortious act within New York. Section 302(a)(3) is also inapplicable here. [HN10] In order to satisfy section 302(a)(3), Plaintiff has to aver facts constituting "a tort under the law of the pertinent jurisdiction." Bank Brussels Lambert, 171 F.3d at 792. In order to maintain an action for conversion -- the only tort alleged --, a plaintiff must allege legal ownership or immediate superior right of possession to property and defendant's unauthorized interference with plaintiff's ownership or possession of such property. [*17] Weizmann Institute of Science v. Neschis, 229 F. Supp. 2d 234, 253 (S.D.N.Y. 2002) (citation omitted). Plaintiff's "conversion" cause of action does not lay out the elements of a prima facie case for conversion as to Moving Defendants and alleges no affirmative act by the Moving Defendants that would constitute conversion. Plaintiff alleges facts consistent with a breach of contract claim, namely that Defendants refused to pay amounts owed to Plaintiff that Defendants were allegedly obligated to pay under a contract. Plaintiff's papers in opposition to the motion to dismiss do nothing further to elucidate any tort element of the claim. Plaintiff has thus failed to come forward with allegations sufficient to support a prima facie case for exercise of tort-based special jurisdiction.

Because the Court finds no basis for the exercise of personal jurisdiction over the Moving Defendants pursuant to New York law, it is unnecessary for the Court to undertake a minimum contacts analysis. Accordingly, the Moving Defendants' motion to dismiss the complaint for lack of personal jurisdiction is granted.

Additional Discovery

Plaintiff also seeks to be afforded permission [*18] to conduct discovery prior to the Court's ruling on the motion to dismiss for lack of personal jurisdiction. [HN11] Jurisdictional discovery is inappropriate where, as in the instant case, a plaintiff has failed entirely even to allege facts from which a court properly could infer the existence of jurisdiction. Daval Steel Products v. M.V. Juraj Dalmatinac, 718 F. Supp. 159, 162 (S.D.N.Y. 1989). The application for further discovery is, therefore, denied.

Motion to Dismiss Pursuant to Fed. R. Civ. P 12(bk6)

DC has moved pursuant to Rule 12(b)(6) to dismiss the complaint for failure to state a claim on which relief can be granted. In light of the Court's disposition of his motion pursuant to Rule 12(b)(2), the Court does not reach his motion under Rule 12(b)(6).

CONCLUSION

For the foregoing reasons, the motion to dismiss the Complaint for lack of personal jurisdiction is granted as to defendants Dominique Casta, Fintage Talent B.V. and Fintage House. The parties shall contact Magistrate Judge Katz's chambers promptly to schedule further proceedings.

SO ORDERED.

Dated: [*19] New York, New York

August 20, 2003

LAURA TAYLOR SWAIN

United States District Judge

FRANCIS A. OKASA, Plaintiff, -against- ALVY HYPPOLITE, JR. and ANTHONY THIBAUT, Defendants.

91 Civ. 4093 (JFK)

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

1992 U.S. Dist. LEXIS 1863

February 19, 1992, Decided

February 19, 1992, Filed

CASE SUMMARY

PROCEDURAL POSTURE: Defendant alleged partners filed a motion to dismiss plaintiff buyer's action on the basis of improper venue in the buyer's breach of contract action. The buyer filed a cross-motions for sanctions pursuant to Fed. R. Civ. P. 11.

OVERVIEW: The buyer alleged that he and the partners entered into an agreement to form a corporation to purchase and operate a gas station in Moonachie, New Jersey. The buyer was a citizen of the Republic of Nigeria. The partners were citizens of New York and New Jersey. The buyer brought a breach of contract action against the partners because they allegedly failed to pay the money that was owed for the gas station purchase. The court's subject matter jurisdiction was based upon the diversity of the parties. The court was located in the southern district of New York. The partners filed a motion to dismiss the buyer's complaint due to improper venue. Under Fed. R. Civ. P. 12(h)(1)(B), the partners waived the defense of improper venue by failing to present it as one of the affirmative defenses cited in their answer. Furthermore, venue was proper under 28 U.S.C. 1391(a)(2) because extensive negotiations and preparations for the formation of the corporation took place in New York. Sanctions under Fed. R. Civ. P. 11 were not warranted even though the partners' motion was without merit.

OUTCOME: The court denied the partners' motion to the buyer's action. The court denied the buyer's cross-motion for sanctions.

CORE TERMS: venue, gas station, conveniens, motion to dismiss, waived

LexisNexis(TM) Headnotes

Civil Procedure > Venue > Individual Defendants

Civil Procedure > Pleading & Practice > Defenses, Objections & Demurrers > Affirmative Defenses

[HN1]A defendant waives the defense of improper venue by failing to present it as an affirmative defenses in an answer. Fed. R. Civ. P. 12(h)(1)(B).

COUNSEL: [*1] **APPEARANCES:** For Plaintiff: Deyan Ranko Brashich, Esq., New York, New York.

For Defendants: James E. Young, Jr., Esq., Hackensack, New Jersey.

JUDGES: KEENAN

OPINIONBY: JOHN F. KEENAN

OPINION: OPINION and ORDER

JOHN F. KEENAN, United States District Judge:

Before the Court is defendants' motion to dismiss plaintiffs' complaint. Plaintiff cross-moves for sanctions pursuant to Fed. R. Civ. P. 11, arguing that the motion is frivolous and not supported by law. The Court heard oral argument on these motions on February 6, 1992. Decision was reserved. For the reasons set forth below, defendants' motion is denied. Plaintiff's motion for sanctions is also denied.

Background

Plaintiff alleges that he and the defendants entered into an agreement to form a corporation which would, in turn, purchase and operate a gas station in Moonachie, New Jersey. Because plaintiff is a citizen of the Republic of Nigeria and the defendants citizens of New York and New Jersey, this Court's subject matter jurisdiction is premised on diversity.

Plaintiff contends that he and defendants orally agreed that he was to pay \$ 357,000 of the total purchase price of \$ 595,000 for the gas station. In return, he would own sixty percent of [*2] the shares of the business. Plaintiff alleges that defendants were to assume and pay off a purchase money mortgage in the amount of \$ 295,000 and were to operate the gas station in return for a forty percent share in the business. Plaintiff alleges that defendants have not fulfilled their obligations under the agreement in that they have failed to make mortgage payments, forcing the plaintiff to assume those payments. Plaintiff's complaint seeks a declaratory judgment that defendants have breached

the oral agreement between the parties, and that consequently plaintiff is the sole shareholder of A fco Services, Inc., the corporation formed for the purchase of the gas station.

Discussion

Defendants advance two arguments in support of their motion to dismiss.

Defendants argue first that the complaint should be dismissed due to improper venue. Plaintiff argues, and the Court agrees, that [HN1]defendants waived the defense of improper venue by failing to present it as one of their affirmative defenses in their answer. Fed. R. Civ. P. 12(h)(1)(B).

Even if not waived, there is no merit to defendants' venue objections. Venue is proper in this district pursuant to 28 U.S.C. 1391(a)(2), because [*3] extensive negotiations and preparations for the formation of the corporation took place in New York.

Defendants' second argument is that this action should be dismissed based on the doctrine of forum non conveniens. Defendants argue that the action should proceed in the District of New Jersey.

There is absolutely no basis for a forum non conveniens dismissal of this action. One of the defendants resides in this district. The District of New Jersey is within the same metropolitan area as this district. In short, defendants have failed to demonstrate that any of the factors set forth by the Supreme Court in Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 67 S.Ct. 839, 91 L.Ed. 955 (1947), and Piper Aircraft Co. v. Reyno, 454 U.S. 235, 102 S.Ct. 252, 70 L. Ed.2d 419 (1981) indicates that a forum non conveniens dismissal would be appropriate in this case.

Plaintiff's motion for Rule 11 sanctions is denied. While the Court has concluded that defendants' motion was without merit, Rule 11 sanctions are not warranted in this instance.

Conclusion

For the reasons set forth above, defendants' motion [*4] is denied. Plaintiff's cross-motion for sanctions is also denied. Counsel are directed to appear for a conference in this action on March 30, 1992 at 11:00 A.M. in Courtroom 228.

SO ORDERED.

Dated: New York, New York
February 19, 1992

JOHN F. KEENAN
United States District Judge

JOEL ROSS, ROSS PROPERTIES, INC. and CITADEL REALTY GROUP, LLC, Plaintiff, -against- UKI LTD.,
TONEX HOLDINGS, LTD., JACOB SCHIMMEL, MARC SCHIMMEL and HAROLD SCHIMMEL, Defendants.

02 Civ. 9297 (WHP)

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

2004 U.S. Dist. LEXIS 2970

March 1, 2004, Decided

March 2, 2004, Filed

PRIOR HISTORY: Ross v. UKI Ltd., 2004 U.S. Dist. LEXIS 483 (S.D.N.Y., Jan. 15, 2004)

DISPOSITION: Defendants' motion to dismiss granted in part and denied in part.

CASE SUMMARY

PROCEDURAL POSTURE: Plaintiffs, a real estate broker and two brokerage agencies, sued defendants, an asset management company, two of its officers, a holding company, and a consultant, for breach of contract and quantum meruit. The holding company, one of the officers, and the consultant moved to dismiss for lack of personal jurisdiction.

OVERVIEW: The broker, who was based in New York, alleged that he entered into a series of transactions with the asset management company that required payment of commissions to the broker. The officers and the consultant were citizens of the United Kingdom. Although the broker personally dealt only with the officers, plaintiffs alleged that the consultant, the officers' father, was the head of the family's real estate empire. The court found that personal jurisdiction did not exist under N.Y. C.P.L.R. 302(a)(1) (2004) over the consultant. The consultant undertook no affirmative acts in New York with respect to the transactions at issue. Plaintiffs offered nothing to rebut defendants' claim that the consultancy by the consultant pre-dated the transactions. Even if the consultant was, as alleged, chairman of the asset management company, plaintiffs had made no effort to pierce the corporate veil. However, plaintiffs had made a prima facie showing of personal jurisdiction with respect to the moving officer and the holding company. The officer allegedly knew of and consented to the transactions, and plaintiffs sufficiently alleged the holding company's involvement in the transactions.

OUTCOME: The consultant's motion to dismiss was granted. The motions to dismiss by the officer and the holding company were denied.

CORE TERMS: personal jurisdiction, oral agreement, real estate, prima facie, comport, declaration, exercise jurisdiction, notions of fair play, motion to dismiss, long-arm, acquisition, financing, favorable, entity, lack of personal jurisdiction, substantial relationship, cause of action, claim asserted, doing business, jurisdictional, purposefully, transacted, consented, exercise of personal jurisdiction, joint venture, personally, takeover, empire, owed, privilege of conducting activities

LexisNexis(TM) Headnotes

Civil Procedure > Jurisdiction > Personal Jurisdiction & In Rem Actions > Personal Jurisdiction

Civil Procedure > Pleading & Practice > Defenses, Objections & Demurrers > Motions to Dismiss

[HN1]On a motion to dismiss for lack of personal jurisdiction pursuant to Fed. R. Civ. P. 12(b)(2), the plaintiff bears the burden of showing that the court has jurisdiction over the moving defendant(s). To satisfy that burden where the parties have conducted jurisdictional discovery but no evidentiary hearing has been held, a plaintiff need only make a prima facie showing of personal jurisdiction. Such a prima facie showing is satisfied by an averment of facts that, if credited by the ultimate trier of fact, would suffice to establish jurisdiction over the defendant.

Civil Procedure > Pleading & Practice > Defenses, Objections & Demurrers > Motions to Dismiss

[HN2]In reviewing a Fed. R. Civ. P. 12(b)(2) motion, a court must construe all pleadings and affidavits in the light most favorable to the plaintiff and doubts are resolved in the plaintiff's favor, notwithstanding a controverting presentation by the moving party. However, a plaintiff may not rely merely on conclusory statements or allegations to establish jurisdiction.

Civil Procedure > Jurisdiction > Personal Jurisdiction & In Rem Actions > Personal Jurisdiction

Civil Procedure > State & Federal Interrelationships > Application of State Law

[HN3]In a federal diversity case, the resolution of issues concerning personal jurisdiction are governed by the law of the state in which the district court sits.

Civil Procedure > State & Federal Interrelationships > Application of State Law

[HN4]The amenability of a foreign corporation to suit in a federal court in a diversity action is determined in accordance with the law of the state where the court sits, with "federal law" entering the picture only for the purpose of deciding whether a state's assertion of jurisdiction contravenes a constitutional guarantee.

Civil Procedure > Jurisdiction > Personal Jurisdiction & In Rem Actions > Personal Jurisdiction

[HN5]N.Y. C.P.L.R. 302(a)(1) (2004) permits a court to exercise jurisdiction over a person or entity that in person or through an agent transacts business within the state or contracts anywhere to supply goods and services in the state. Specifically, jurisdiction under N.Y. C.P.L.R. 302(a)(1) is proper where: (1) the defendant has transacted business in New York; and (2) the cause of action arises out of the subject matter of the transacted business.

Civil Procedure > Jurisdiction > Personal Jurisdiction & In Rem Actions > Personal Jurisdiction

[HN6]A non-domiciliary transacts business under N.Y. C.P.L.R. 302(a)(1) (2004) where he purposefully avails himself of the privilege of conducting activities within New York, thus invoking the benefits and protections of its laws. A court must look to the totality of the circumstances in deciding whether the defendant has engaged in such purposeful activity. Second, the court must find some articulable nexus between the business transacted and the cause of action sued upon. A substantial relationship is required between the transaction and the claim asserted. In a breach of contract case, the pivotal inquiry is whether the defendant has performed purposeful acts in New York in relation to the contract.

Civil Procedure > Jurisdiction > Personal Jurisdiction & In Rem Actions > Personal Jurisdiction

[HN7]In addition to affirmative acts, jurisdiction is also appropriate under N.Y. C.P.L.R. 302(a)(1) (2004) pursuant to the so-called "agency theory." To be

considered an agent for jurisdictional purposes, the putative agent must have acted in the state for the benefit of, and with the knowledge and consent of the non-resident principal. An agent must act at the request and for the business purposes of the principal. In addition, the United States Court of Appeals for the Second Circuit has interpreted N.Y. C.P.L.R. 302(a)(1) to require a showing that the principal exercised some control over the activities of the alleged agent. A showing must be made that the alleged agent acted in New York for the benefit of, with the knowledge and consent of, and under some control by, the nonresident principal. Thus, if plaintiffs can demonstrate that personal jurisdiction vests over an agent of a defendant, and that the agent acted on behalf of the defendant in the transaction at issue, personal jurisdiction will be imputed to the defendant.

Civil Procedure > Jurisdiction > Personal Jurisdiction & In Rem Actions > Personal Jurisdiction

Civil Procedure > Jurisdiction > Personal Jurisdiction & In Rem Actions > Constitutional Limits

[HN8]In addition to determining whether a state's long-arm statute extends the state's jurisdiction over a non-domiciliary defendant, a court must also determine whether exercise of this jurisdiction comports with federal due process. To do so, a court must undertake a two-step analysis: (1) a "minimum contacts" inquiry; and (2) a "reasonableness" inquiry.

Civil Procedure > Jurisdiction > Personal Jurisdiction & In Rem Actions > Personal Jurisdiction

Civil Procedure > Jurisdiction > Personal Jurisdiction & In Rem Actions > Constitutional Limits

[HN9]Under the "minimum contacts" inquiry for exercise of personal jurisdiction, a court must determine whether the defendant has certain minimum contacts with the forum such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice. To establish minimum contacts with a state, a plaintiff must show that the moving defendant "purposefully availed" himself of the privilege of doing business in the state and should reasonably anticipate being haled into court there. It is required that there be some act by which the defendant purposely avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws.

Civil Procedure > Jurisdiction > Personal Jurisdiction & In Rem Actions > Constitutional Limits

[HN10]Under the second step of the due process analysis for personal jurisdiction, a court must determine whether the assertion of personal jurisdiction comports with traditional notions of fair play and substantial justice--that is, whether it is reasonable under the circumstances of the particular case. In evaluating reasonableness, courts must consider the following five factors: (1) the burden that the exercise of jurisdiction will impose on the defendant; (2) the interests of the forum state in adjudicating the case; (3) the plaintiff's interest in obtaining convenient and effective relief; (4) the interstate judicial system's interest in obtaining the most efficient resolution of the controversy; and (5) the shared interest of the states in furthering substantive social policies.

Civil Procedure > Jurisdiction > Personal Jurisdiction & In Rem Actions > Personal Jurisdiction

[HN11]It is well-settled that where a corporation is doing business in New York, an officer of the corporation does not subject himself individually to jurisdiction unless he is doing business in New York individually.

Civil Procedure > Jurisdiction > Personal Jurisdiction & In Rem Actions > Personal Jurisdiction

Civil Procedure > Jurisdiction > Personal Jurisdiction & In Rem Actions > Constitutional Limits

[HN12]Conclusory allegations are insufficient to support a prima facie showing of personal jurisdiction under the New York long-arm statute, and do not comport with constitutional due process requirements.

Civil Procedure > Jurisdiction > Personal Jurisdiction & In Rem Actions > Personal Jurisdiction

[HN13]Where there is joint control of a business enterprise--similar to that existing in a partnership or joint venture--enough control has been shown to establish prima facie this particular element of agency to satisfy long-arm jurisdiction.

Civil Procedure > Pleading & Practice > Defenses, Objections & Demurrers > Motions to Dismiss

[HN14]Upon a motion to dismiss, a court must construe all pleadings and affidavits in the light most favorable to the plaintiff and doubts are resolved in the

plaintiffs favor, notwithstanding a controverting presentation by the moving party.

Business & Corporate Entities > Agency > Agency Established > Elements of Agency

[HN15]Under traditional agency law, joint participation in a partnership or joint venture establishes "control" sufficient to make each partner or joint venturer an agent of the others.

COUNSEL: [*1] For Joel Ross, Ross Properties, Inc, Citadel Realty Group, L.L.C., Plaintiffs: Gerald Padian, Tashjian & Padian, New York, NY.

For UKI, Ltd., Tonex Holdings, Ltd., Jacob Schimmel, Marc Schimmel, Harold Schimmel, Defendants: Marshall R. King, Gibson, Dunn & Crutcher, L.L.P., New York, NY.

JUDGES: WILLIAM H. PAULEY III, U.S.D.J.

OPINIONBY: WILLIAM H. PAULEY III

OPINION: MEMORANDUM AND ORDER

WILLIAM H. PAULEY III, District Judge:

In this breach of contract and quantum meruit action, plaintiffs Joel Ross ("Ross"), Ross Properties, Inc. ("Ross Properties"), and Citadel Realty Group, LLC ("Citadel") allege that defendants UKI Ltd. ("UKI"), Tonex Holdings, Ltd. ("Tonex"), Jacob Schimmel, Abraham Moses Schimmel ("Marc Schimmel"), and Harry C. Schimmel breached a series of oral brokerage agreements with plaintiffs. Currently before this Court are motions to dismiss this action for lack of personal jurisdiction, pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure, by defendants Harry Schimmel, Marc Schimmel, and Tonex. For the reasons set forth below, Harry Schimmel's motion is granted, and Marc Schimmel's and Tonex's motions are denied. [*2]

BACKGROUND

I. The Parties

Ross is a licensed real estate broker in New York, and a principal in two New York-based real estate brokerage agencies, Ross Properties and Citadel. (Affidavit of Joel Ross in Opposition to Motion to Dismiss, dated May 22, 2003 ("Ross Aff.") P 2; Complaint ("Compl.") PP 1-3.) UKI is a United Kingdom limited liability company, based in London, that serves as an advisor and asset manager for real estate investors. (Declaration of Abraham Moses Schimmel, dated January 15, 2003 ("M. Schimmel Decl.") P 10.) Tonex is a holding company, organized

under the laws of Gibraltar, that owns various subsidiaries that invest in real estate and other assets. (Declaration of Maurice Moses Benady, dated March 27, 2003 ("Benady Decl.") P 3.) Tonex is beneficially owned by a trust whose beneficiaries are members of the Schimmel family. (Ross Decl. PP 27-28, Exs. 9, 11, 20, 26, 42-44.) Jacob Schimmel and Marc Schimmel, U.K. citizens who reside in London, England, are officers, directors, and shareholders of UKI. (M. Schimmel Decl. PP 2, 10; Declaration of Jacob Schimmel, dated June 20, 2003 ("J. Schimmel Decl.") P 1; Compl. P 6.) Harry Schimmel, Jacob and Marc [*3] Schimmel's father, is a U.K. citizen who has at times served as a consultant to UKI. (Declaration of Harry C. Schimmel, dated March 21, 2003 ("H. Schimmel Decl.") PP 2, 11.)

In October 1998, Ross was introduced to Jacob and Marc Schimmel, and agreed to assist the Schimmels in accessing sources of capital in the United States for various real estate acquisitions. (Ross Decl. P 6.) Ross claims that although he personally dealt with Jacob and Marc Schimmel, they were "young, inexperienced and unsophisticated with regard to real estate financing," and that Harry Schimmel was in fact the "head . . . of the entire Schimmel real estate empire." (Ross Decl. PP 7-8.)

II. The Westbrook Transactions

In October 1998, Ross introduced Marc and Jacob Schimmel to the principals of Westbrook Partners, LLC ("Westbrook"), an opportunity fund based in New York that targeted real-estate investments. (Ross Decl. P 9.) Over the course of the next few months, Ross, on behalf of Jacob and Marc Schimmel, negotiated a joint venture with Westbrook (the "Westbrook Joint Venture") in which the Schimmels would provide 10% of the equity and Westbrook would provide 90%, with the Schimmels managing the acquired [*4] properties. (Ross Decl. PP 10, 11.)

On November 4, 1998, UKI, by Marc Schimmel, entered into an agreement with Ross Properties (the "Joint Venture Agreement") under which Ross Properties was to be paid a commission based on the equity contributed by Westbrook for acquisitions of property by the Westbrook Joint Venture. (Ross Decl. P 12, Ex. 3.) Ross was paid approximately \$ 1.5 million under the Joint Venture Agreement. (Ross Decl. P 14, Ex. 5.)

While the Complaint and opposing declaration are far from clear on this point, Ross also appears to allege that he entered into a simultaneous oral agreement with the Schimmels at the time of the Joint Venture Agreement (the "Westbrook Oral Agreement"). Under the Westbrook Oral Agreement, Ross was to receive a

brokerage commission of 1% of the gross proceeds of any transaction, other than those covered under the Joint Venture Agreement, involving the Schimmels (or any related entity) and Westbrook. (Compl. P 14.)

A. The British Land Agreement

In March 1999, Tonex, through a wholly-owned subsidiary Allerbeck Limited, purchased a portfolio of properties from The British Land Company, PLC (the "Bond Portfolio"). (Ross Decl. P 30, Exs. [*5] 13, 25.) Tonex financed the acquisition of the Bond Portfolio through a secured loan facility with a German bank, DG Bank AG (the "British Land Agreement"). (Ross Decl. Ex. 13; Compl. P 18.) Ross alleges, however, that Tonex first procured a viable offer from Westbrook to fund the acquisition of the Bond Portfolio (the "Westbrook Offer"), and then leveraged the Westbrook Offer to obtain a more favorable deal from DG Bank AG. (Ross Decl. P 31; Compl. P 18.) Ross claims that, under the terms of the Westbrook Oral Agreement, he is entitled to a 1% brokerage commission on the British Land Agreement. Ross alleges that Jacob Schimmel acknowledged this debt, but that Marc Schimmel refused to pay it, stating that "we will do a lot more business with you [Ross] in the future and will make it up to you that way." (Ross Decl. PP 31-32.)

B. Project Alliance

In March 2001, Jacob Schimmel told Ross that the Schimmel family desired to sell many of their properties. (Ross Decl. P 42.) Ross suggested to Jacob Schimmel that the family sell certain of their properties to Westbrook, and reminded him that if they did so, Ross would be owed a 1% commission under the Westbrook Oral Agreement. (Ross [*6] Decl. P 42.) Jacob Schimmel agreed. (Ross Decl. PP 42-43, 47.) Later that year, Westbrook, along with another fund, purchased a \$ 573,000,000 portfolio of properties beneficially owned by Marc Schimmel, Jacob Schimmel, and Tonex ("Project Alliance"). (Ross Decl. PP 44-45, Exs. 11, 30-32; Compl. P 15.) Ross claims that, under the terms of the Westbrook Oral Agreement, he is owed a 1% commission as a result of Project Alliance.

III. The GMAC Transactions

In Spring 2000, Jacob Schimmel informed Ross that "the Schimmel family" was contemplating a possible takeover of Great Portland Estates Plc. ("Great Portland"), a publicly-traded real estate investment company in the U.K. (Ross Decl. P 36.) In order to meet the Schimmel's need for a substantial amount of financing to complete the Great Portland takeover, Ross set up a series of meetings for Jacob and Marc

Schimmel with officers of GMAC Commercial Mortgage ("GMAC") in New York. (Ross Decl. P 37.)

On or about April 13, 2000, Ross and Jacob Schimmel entered into another oral agreement (the "GMAC Oral Agreement") pursuant to which Ross would be paid a fee of 1% of any senior financing and 2% of any mezzanine financing obtained [*7] from GMAC by the Schimmels and their related entities. (Ross Decl. P 38; Compl. P 22.) Although both Marc and Jacob Schimmel attended meetings with GMAC in New York through Summer 2000, the Great Portland transaction was never completed. (Ross Decl. PP 39-41, Ex. 29.) Ross, however, continued to cultivate the GMAC relationship on behalf of the Schimmels with an eye toward future deals. (Ross Decl. P 41.)

In October 2002, Tonex acquired certain properties in the U.K. ("Project Aston Martin"). (Ross Decl. PP 54-55, Exs. 39-40.) GMAC financed Project Aston Martin, providing Tonex with a \$ 210,000,000 loan facility. (Ross Decl. P 54, Exs. 39-43; Compl. P 23.) Ross claims that GMAC made additional loans to the Schimmels and related entities in excess of \$ 785,000,000. (Ross Decl. P 54; Compl. PP 24-27.) Ross claims that under the terms of the GMAC Oral Agreement, he is owed a commission on these loans.

DISCUSSION

I. Rule 12(b)(2) Standards

[HN1]On a motion to dismiss for lack of personal jurisdiction pursuant to Rule 12(b)(2), the plaintiff bears the burden of showing that the court has jurisdiction over the moving defendant(s). Metro. Life Ins. Co. v. Robertson-Ceco Corp., 84 F.3d 560, 566 (2d Cir. 1996). [*8] To satisfy that burden where, as here, the parties have conducted jurisdictional discovery but no evidentiary hearing has been held, a plaintiff need only make a prima facie showing of personal jurisdiction. Metro. Life Ins., 84 F.3d at 567. Such a prima facie showing is satisfied by "an averment of facts that, if credited by [the ultimate trier of fact], would suffice to establish jurisdiction over the defendant." Ball v. Metallurgie Hoboken-Overpelt, S.A., 902 F.2d 194, 197 (2d Cir. 1990).

[HN2]In reviewing a Rule 12(b)(2) motion, a court must construe all pleadings and affidavits "in the light most favorable to the plaintiff and doubts are resolved in the plaintiff's favor, notwithstanding a controverting presentation by the moving party." A.I. Trade Fin., Inc. v. Petra Bank, 989 F.2d 76, 79-80 (2d Cir. 1993); accord Metro. Life Ins., 84 F.3d at 567; Landoil Res. Corp. v. Alexander & Alexander Servs., Inc., 918 F.2d 1039, 1043 (2d Cir. 1990). However, a plaintiff may

not rely merely on conclusory statements or allegations to establish jurisdiction. Ball, 902 F.2d at 197.

II. [*9] Exercise of Personal Jurisdiction

[HN3]In a federal diversity case such as this, the resolution of issues concerning personal jurisdiction are governed by the law of the state in which the district court sits. DiStefano v. Carozzi N. Am., Inc., 286 F.3d 81, 84 (2d Cir. 2001); CutCo Indus., Inc. v. Naughton, 806 F.2d 361, 365 (2d Cir. 1986). Accordingly, New York law controls personal jurisdiction in this action. The issue currently before this Court is whether the moving defendants are subject to personal jurisdiction under New York law on the theory that they transacted business within the meaning of Section 302(a)(1) of the New York Civil Practice Law and Rules ("CPLR"), a provision of New York's long-arm statute, and, if so, whether doing so comports with constitutional due process guarantees. See Int'l Shoe Co. v. State of Washington, 326 U.S. 310, 316, 90 L. Ed. 95, 66 S. Ct. 154 (1945); accord Metro. Life Ins., 84 F.3d at 567 [HN4]("The amenability of a foreign corporation to suit in a federal court in a diversity action is determined in accordance with the law of the state where the court sits, with 'federal law' entering [*10] the picture only for the purpose of deciding whether a state's assertion of jurisdiction contravenes a constitutional guarantee.") (quoting Arrowsmith v. United Press Int'l, 320 F.2d 219, 223 (2d Cir. 1963) (en banc)).

A. Jurisdiction Under CPLR 302(a)(1)

CPLR 302(a)(1) [HN5]permits a court to exercise jurisdiction over a person or entity that "in person or through an agent . . . transacts business within the state or contracts anywhere to supply goods and services in the state." n1 N.Y. CPLR § 302(a)(1) (McKinney's 2004). Specifically, jurisdiction under CPLR 302(a)(1) is proper where: (1) the defendant has transacted business in New York; and (2) the cause of action arises out of the subject matter of the transacted business. CutCo Indus., 806 F.2d at 365.

----- Footnotes -----

n1 Plaintiffs concede, as they must, that the moving defendants lack the systemic contacts required to be held to be "doing business in the New York" under CPLR § 301.

----- End Footnotes-----

First, [HN6] a non-domiciliary [*11] transacts business under CPLR 302(a)(1) where he "purposefully avails [himself] of the privilege of conducting activities within [New York], thus invoking the benefits and protections of its laws." CutCo Indus., 806 F.2d at 365 (quoting McKee Elec. Co. v. Rauland-Borg Corp., 20 N.Y.2d 377, 382, 229 N.E.2d 604, 283 N.Y.S.2d 34 (1967)). A court must look to the totality of the circumstances in deciding whether the defendant has engaged in such purposeful activity. CutCo Indus., 806 F.2d at 365. Second, the court must find "some articulable nexus between the business transacted and the cause of action sued upon." McGowan v. Smith, 52 N.Y.2d 268, 272, 419 N.E.2d 321, 437 N.Y.S.2d 643 (N.Y. 1981); accord Kreutter v. McFadden Oil Corp., 71 N.Y.2d 460, 467, 522 N.E.2d 40, 527 N.Y.S.2d 195 (N.Y. 1988) (requiring a "substantial relationship between the transaction and the claim asserted"); see also PDK Labs, Inc. v. Friedlander, 103 F.3d 1105, 1109 (2d Cir. 1997); Agency Rent a Car Sys., Inc. v. Grand Rent a Car Corp., 98 F.3d 25, 29-31 (2d Cir. 1996); CutCo Indus., 806 F.2d at 365. In a breach of contract case, the pivotal inquiry is "whether the [*12] defendant has performed purposeful acts in New York in relation to the contract." A.C.K. Sports, Inc. v. Doug Wilson Enters., 661 F. Supp. 386, 390 (S.D.N.Y. 1989).

[HN7] In addition to affirmative acts, jurisdiction is also appropriate under CPLR 302(a)(1) pursuant to the so-called "agency theory." To be considered an agent for jurisdictional purposes, the putative agent must have acted in the state "for the benefit of, and with the knowledge and consent of" the non-resident principal. Grove Press, Inc. v. Angleton, 649 F.2d 121, 122 (2d Cir. 1981); accord Galay v. Bulletin Co., Inc., 504 F.2d 1062, 1065 (2d Cir. 1974) (an agent must act "at the request and for the business purposes of" the principal). In addition, the Second Circuit has interpreted CPLR 302(a)(1) to require a showing that the principal exercised some control over the activities of the alleged agent. CutCo Indus., 806 F.2d at 366; accord Grove Press, 649 F.2d at 122 ("[A] showing must be made that the alleged agent acted in New York for the benefit of, with the knowledge and consent of, and under some control by, the nonresident principal. [*13] "). Thus, if plaintiffs can demonstrate that personal jurisdiction vests over an agent of one of the moving defendants, and that the agent acted on behalf of the moving defendant in the transaction at issue, personal jurisdiction will be imputed to the moving defendant.

B. Due Process

[HN8] In addition to determining whether the New York long-arm statute extends the state's jurisdiction

over a nondomiciliary defendant, a court must also determine whether exercise of this jurisdiction comports with federal due process. Bank Brussels Lambert v. Fiddler Gonzalez & Rodriguez, 305 F.3d 120, 127 (2d Cir. 2002). To do so, a court must undertake a two-step analysis: (1) a "minimum contacts" inquiry; and (2) a "reasonableness" inquiry. Bank Brussels Lambert, 305 F.3d at 127; Metro. Life Ins., 84 F.3d at 567.

[HN9] Under the "minimum contacts" inquiry, a court must determine whether the defendant "has 'certain minimum contacts [with the forum] . . . such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.'" U.S. Titan, Inc. v. Guangzhou Zhen Hua Shipping Co., 241 F.3d 135, 152 (2d Cir. 2001) [*14] (quoting Calder v. Jones, 465 U.S. 783, 788, 79 L. Ed. 2d 804, 104 S. Ct. 1482 (1984)) (alteration in original and internal citations omitted). To establish minimum contacts with New York, a plaintiff must show that the moving defendant "purposefully availed" himself of the privilege of doing business in New York and "should reasonably anticipate being haled into court there." World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297, 62 L. Ed. 2d 490, 100 S. Ct. 559 (1980); accord Burger King Corp. v. Rudzewicz, 471 U.S. 462, 475, 85 L. Ed. 2d 528, 105 S. Ct. 2174 (1985) (requiring that "there be some act by which the defendant purposely avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws").

[HN10] Under the second step of the due process analysis, a court must determine "whether the assertion of personal jurisdiction comports with 'traditional notions of fair play and substantial justice' -- that is, whether it is reasonable under the circumstances of the particular case." Metro. Life Ins., 84 F.3d at 568 (quoting Int'l Shoe, 326 U.S. at 316). In evaluating reasonableness, [*15] courts must consider the following five factors: "(1) the burden that the exercise of jurisdiction will impose on the defendant; (2) the interests of the forum state in adjudicating the case; (3) the plaintiff's interest in obtaining convenient and effective relief; (4) the interstate judicial system's interest in obtaining the most efficient resolution of the controversy; and (5) the shared interest of the states in furthering substantive social policies." Metro. Life Ins., 84 F.3d at 568; accord Asahi Metal Indus. Co. v. Superior Court, 480 U.S. 102, 113-14, 94 L. Ed. 2d 92, 107 S. Ct. 1026 (1987); Burger King, 471 U.S. at 476-77; Bank Brussels Lambert, 305 F.3d at 129.

III. Defendant Harry Schimmel

Even after construing all pleadings and affidavits in the light most favorable to plaintiffs, and resolving all doubts in their favor, plaintiffs are unable to make a prima facie showing of personal jurisdiction over defendant Harry Schimmel. Harry Schimmel is a citizen and resident of the U.K., and it is undisputed that he undertook no affirmative acts in New York with respect to the transactions at issue. Further, the [*16] indirect actions alleged by plaintiffs are insufficient to establish jurisdiction under either the CPLR or federal due process.

For example, while plaintiffs assert generally that Harry Schimmel was a consultant to UKI and therefore personally benefitted from the transactions at issue, they present no evidence to rebut defendants' specific averment that Harry Schimmel's consultancy was limited to properties managed by UKI that pre-dated the earliest of the Ross transactions. (H. Schimmel Decl. P 11; Reply Declaration of Harry C. Schimmel, dated June 19, 2003 ("H. Schimmel Reply Decl.") P 5.) See, e.g., Kreutter, 71 N.Y.2d at 467 (must be a "substantial relationship between the transaction and the claim asserted"); McGowan, 52 N.Y.2d at 272 (must find "some articulable nexus between the business transacted and the cause of action sued upon").

Further, plaintiffs claim that this Court may exercise jurisdiction over Harry Schimmel pursuant to an agency theory on the grounds that he was a beneficial owner of at least some of the properties sold to Westbrook pursuant to Project Alliance. However, this Court may not exercise jurisdiction over Harry [*17] Schimmel under the agency theory absent any proof that he knew about, authorized, and exercised some control over the actions of Jacob Schimmel, Marc Schimmel, UKI, or Ross with respect to the Westcliff Oral Agreement. (H. Schimmel Decl. P 11; H. Schimmel Reply Decl. PP 11, 13, 15.) See, e.g., Grove Press, 649 F.2d at 122 (in order to exercise jurisdiction over an agent, a court must find that the agent "acted in New York for the benefit of, with the knowledge and consent of, and under some control by, the nonresident principal"); Cornell v. Assicurazioni Generali S.p.A., 2000 U.S. Dist. LEXIS 2922, Nos. 97 Civ. 2262, 98 Civ. 9186 (MBM), 2000 WL 284222, at *6 (S.D.N.Y. March 16, 2000) (in finding no jurisdiction under agency theory, stating "plaintiffs cannot rely upon such wholly non-specific allegations as the sole basis for connecting [defendant] to the alleged conspiracy").

Finally, plaintiffs' allegation that Harry Schimmel was the Chairman of UKI, and therefore is subject to the jurisdiction of this Court based on UKI's contacts, is unavailing. Even if Harry Schimmel were Chairman of UKI (Ross Decl. Ex. 2), plaintiffs make no effort to

pierce UKI's [*18] corporate veil, nor could they on the record before this Court. Harry Schimmel's position with UKI does not by itself subject him to the jurisdiction of this Court. See, e.g., Black v. USA Travel Auth., 2001 U.S. Dist. LEXIS 9297, No. 99 Civ. 11278 (WHP), 2001 WL 761070, at *4 (S.D.N.Y. July 6, 2001) [HN11] ("It is well-settled that 'where a corporation is doing business in New York, an officer of the corporation does not subject himself, individually to . . . jurisdiction unless he is doing business in [New York] individually.'") (quoting United Mizrahi Bank Ltd. v. Sullivan, 2000 U.S. Dist. LEXIS 16157, No. 97 Civ. 9282 (LMM), 2000 WL 1678040, at *3 (S.D.N.Y. Nov. 6, 2000)).

The gravamen of plaintiffs jurisdictional allegations concerning Harry Schimmel are that he is the "patriarch of the Schimmel family" and "de facto head of the Schimmel family empire." (Pl. Opp. at 1, 18; see also Ross Decl. PP 7-8 (Harry Schimmel is the "head . . . of the entire Schimmel real estate empire.")). Such [HN12] conclusory allegations are insufficient to support a prima facie showing of personal jurisdiction under the New York long-arm statute, and do not comport with constitutional due process requirements. See [*19] Ball, 902 F.2d at 197. Accordingly, Harry Schimmel's Rule 12(b)(2) motion is granted, and all claims against defendant Harry C. Schimmel are dismissed. n2

----- Footnotes -----

n2 The parties' various letters to this Court while the current motions were sub judice have no impact on this Court's determination. (Letters to the Court from Gerald Padian, Esq., dated August 19, September 18, and October 21, 2003; Letters to the Court from Marshall R. King, Esq., dated August 20, September 16, September 18, and October 27, 2003.) Plaintiffs' allegations that defendants were somehow trying to game this Court by asserting attorney-client privilege for Harry Schimmel based on a common interest while simultaneously arguing absence of personal jurisdiction are attractive, but ultimately fail to withstand scrutiny. Defendants' arguments concerning the "common interest" privilege for Harry Schimmel were based on transactions wholly separate from the Ross transactions that are the subject of this motion. See Ross v. UKI Ltd., 2004 U.S. Dist. LEXIS 483, No. 02 Civ. 9297

(WHP)(JCF), 2004 WL 67221, *3-8
(S.D.N.Y. Jan. 15, 2004).

----- End Footnotes-----

[*20]

IV. Defendants Marc Schimmel and Tonex

In contrast to their allegations concerning Harry Schimmel, plaintiffs have made out a sufficient prima facie case for this Court's exercise of personal jurisdiction over both Marc Schimmel and Tonex under an agency theory. Plaintiffs have alleged that Marc Schimmel knew of and consented to actions by Jacob Schimmel, UKI, and Ross in New York, and that he exercised at least "some control" over those actions. See Grove Press, 649 F.2d at 122. For example, Marc Schimmel played an active role in the negotiation of the Joint Venture Agreement in both his personal and corporate capacities (Ross Decl. P 10-11), while directly and personally benefitting from Project Alliance (Ross Decl. PP 44-45, Exs. 11, 30-32). See CutCo Indus., 806 F.2d at 366 [HN13] ("Where there is joint control of a business enterprise - similar to that existing in a partnership or joint venture - enough control has been shown to establish prima facie this particular element of agency to satisfy long-arm jurisdiction.").

In addition, Marc Schimmel was intimately involved in the negotiation of the failed Great Portland takeover, which [*21] led directly to the GMAC Oral Agreement and Project Aston Martin. (Ross Decl. PP 39-41, Ex. 29.) See, e.g., Kreutter, 71 N.Y.2d at 467 (must be a "substantial relationship between the transaction and the claim asserted"). Therefore, at this stage of the proceedings, Marc Schimmel may be presumed to have consented to, and exercised some control over, the execution of the Westbrook Oral Agreement and GMAC Oral Agreement in New York, thus subjecting him to jurisdiction under CPLR 302(a)(1). See A.I. Trade Fin., 989 F.2d at 79-80 [HN14] (court must construe all pleadings and affidavits "in the light most favorable to the plaintiff and doubts are resolved in the plaintiff's favor, notwithstanding a controverting presentation by the moving party.") (emphasis added); see also CutCo Indus., 806 F.2d at 366 [HN15] ("Under traditional agency law, joint participation in a partnership or joint venture establishes 'control' sufficient to make each partner or joint venturer an agent of the others.").

Further, exercising personal jurisdiction over Marc Schimmel comports with the requirements of the due process clause. Through his actions and the actions

[*22] of his agents, Marc Schimmel purposefully availed himself of the privilege of doing business with plaintiffs in New York, and could reasonably anticipate having to defend his actions in a New York court. World-Wide Volkswagen, 444 U.S. at 297. As a result, Marc Schimmel has sufficient "minimum contacts" with New York such that the exercise of this Court's jurisdiction over him "does not offend traditional notions of fair play and substantial justice." Calder, 465 U.S. at 788. Further, after considering the factors established by the Supreme Court in Metro. Life Ins., 84 F.3d at 568, this Court's exercise of jurisdiction over Marc Schimmel is reasonable under the circumstances of this case. Accordingly, Marc Schimmel's motion to dismiss for lack of personal jurisdiction is denied.

As with Marc Schimmel, plaintiffs have made a sufficient prima facie showing that Jacob Schimmel, UKI, and Ross acted as agents of Tonex with respect to at least some of the transactions at issue. Tonex was the eventual Schimmel-controlled counter-party in the British Land Agreement (Ross Decl. P 31, Ex. 13) and Project Aston Martin (Ross Decl. P 54-55, Exs. [*23] 39-40), and was a direct beneficiary of Project Alliance (Ross Decl. PP 44-45, Exs. 11, 30-32). Further, plaintiffs have credibly alleged control over Tonex by members of the Schimmel family including Marc and Jacob Schimmel (Ross Decl. PP 27-28, Exs. 42-44), and UKI's role as Tonex's managing agent with respect to the above-mentioned transactions (Ross Decl. P 54, Exs. 42-44). See A.I. Trade Fin., 989 F.2d at 79-80. Accordingly, plaintiffs have sufficiently demonstrated that Tonex knew of and consented to actions by Jacob Schimmel, UKI, and Ross in New York, and that it exercised at least "some control" over those actions, and thus personal jurisdiction under CPLR 302(a)(1) is appropriate. See Grove Press, 649 F.2d at 122.

In addition, this Court finds that, like Marc Schimmel, Tonex had sufficient minimum contacts with New York, and that the exercise of personal jurisdiction over Tonex comports with the "traditional notions of fair play and substantial justice" embodied in the due process clause of the Fourteenth Amendment. Int'l Shoe, 326 U.S. at 316. Therefore, Tonex's motion to dismiss based on lack of personal jurisdiction [*24] is denied.

CONCLUSION

For the foregoing reasons: (1) defendant Harry C. Schimmel's Rule 12(b)(2) motion to dismiss based on lack of personal jurisdiction is granted, and plaintiffs' claims against him are dismissed; (2) defendant Abraham Moses ("Marc") Schimmel's Rule 12(b)(2) motion is denied; and (3) defendant Tonex Holdings Ltd.'s Rule 12(b)(2) motion is denied.

Dated: March 1, 2004

New York, New York

SO ORDERED:

/s/ William H. Pauley III

U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Gregory V. Serio, Superintendent of Insurance
of the State of New York, as Rehabilitator of
FRONTIER INSURANCE COMPANY, and as
Assignee of PLATINUM INDEMNITY, LTD.,

Plaintiff,

-against-

**DWIGHT HALVORSON INSURANCE
SERVICES, INC d/b/a/ F.S.I.M. INSURANCE
SERVICES and FOOD SERVICE INSURANCE
MANAGERS, INC.,**

Defendants.

04 CV 3361 (RMB)

**DECLARATION OF
LAURIE J. WEISS**

LAURIE J. WEISS, pursuant to 28 U.S.C. § 1746, being of full age, hereby declares as follows:

1. I am an employee of Frontier Insurance Company in Rehabilitation (“FIC”), the plaintiff in the above-captioned action. I respectfully submit this Declaration in opposition to the defendants’ motion to dismiss FIC’s Complaint.

2. As a Program Manager at FIC, I am fully familiar with the insurance program giving rise to FIC's claims. As a result, I have personal knowledge of the facts set forth herein, based either on my involvement with the program at issue or my review of FIC's files with respect to that program.

3. This litigation arises out of a workers' compensation insurance program referred to as the Food Service Insurance Managers, Inc. ("FSIM") program, or the FSIM Program for short.

4. FSIM, a defendant in this matter, was formed in or about 1997. Dwight J. Halvorson, the president of defendant Dwight Halvorson Insurance Services, Inc., established FSIM as part of a comprehensive workers' compensation program for the agribusiness and food-related industries.

5. During the time period relevant to this litigation, neither FSIM nor DHIS was an insurance company. As a result, they needed to affiliate with an established insurance carrier in order to secure coverage for participants in Halvorson's program.

6. It is in this context that the defendants first approached FIC in late 1997. At that time, representatives of the defendants reached out to senior FIC managers in New York to determine if FIC was interested in serving as the "fronting" carrier for the FSIM program.

7. In pitching the FSIM Program, on or about November 24, 1997, FSIM forwarded to FIC in New York certain materials outlining the nature of the program. These materials included a binder entitled "Program Explanation & Proposal of Underwriting Authority Parameters." I have attached hereto as Exhibit A true and correct copies of these materials.

8. Based on these promotional materials, FIC decided to pursue negotiations with the defendants. These negotiations involved substantial communications by telephone and otherwise between the defendants' representatives in California and FIC managers in New York.

9. During the course of these negotiations, FIC required the defendants to submit additional information in order to better evaluate the proposed program. For example, on or about December 3, 1997, DHIS forwarded to FIC in New York a completed Agency Appointment Questionnaire, information regarding its errors and omissions insurance policy, licenses, resumes of key personnel and a financial statement. I have attached hereto as Exhibit B a true and correct copy of DHIS's letter enclosing these materials.

10. Ultimately, on or about January 14, 1998, FIC and DHIS entered into a Limited Agency Agreement (“Agency Agreement”) with respect to the FSIM Program. The Agency Agreement was deemed effective January 1, 1998. I have attached hereto as Exhibit C a true and correct copy of the Agency Agreement.

11. The Agency Agreement was drafted by FIC and its counsel in New York. Negotiations regarding specific terms of the contract took place primarily by telephone between FIC representatives based in New York and the defendants’ representatives in California. FIC executed the agreement in New York. It is my understanding that DHIS executed the agreement in California and then forwarded the executed document to FIC in New York.

12. Pursuant to the Agency Agreement, FIC appointed DHIS as its agent authorized to quote, bind and decline coverage in connection with the FSIM Program. Although DHIS was granted considerable latitude with respect to these responsibilities, pursuant to the Agency Agreement, it was to remain FIC’s agent and operate under the overall supervision of FIC managers based in New York.

13. FIC terminated its relationship with the defendants effective January 1, 2000.

14. During the two-year period the FSIM Program was in existence, the defendants continued to have substantial and continuous contacts with FIC representatives in New York regarding the FSIM Program’s day-to-day operations and other issues relating to the program.

15. Among other things, throughout the course of this business relationship, Halvorson and a number of other representatives of the defendants traveled to New York to meet with FIC representatives at our offices in Sullivan County with respect to the FSIM Program. I

have attached hereto as Exhibit D true and correct copies of agendas and related documents concerning the face-to-face meetings these representatives of the defendants had with FIC representatives in New York.

16. In addition, during this two-year period, representatives of the defendants placed countless telephone calls to FIC managers in New York with respect to the FSIM Program.

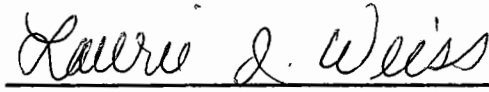
17. There also was a voluminous flow of correspondence from the defendants to FIC representatives in New York regarding the FSIM Program. I have attached hereto as Exhibits E and F true and correct copies of some of this correspondence forwarded to FIC during 1998 and 1999, respectively.

18. Throughout the course of the parties' two-year business relationship, and pursuant to their obligations under the Agency Agreement, the defendants also routinely forwarded to FIC in New York payments in the form of checks to be deposited into FIC's New York bank account. I have attached hereto as Exhibit G true and correct copies of some of these checks forwarded to FIC in connection with the FSIM Program.

19. On occasion, the defendants also wired funds to FIC's account in New York in connection with the FSIM Program. I have attached hereto as Exhibit H true and correct copies of certain FSIM bank records relating to these wire transfers.

20. Pursuant to their obligations under the Agency Agreement, the defendants also forwarded monthly Account Current reports to FIC managers in New York. These reports were of critical importance to the FSIM Program and are at the heart of FIC's claims in this case.

I declare under penalty of perjury that the foregoing is true and correct. Executed
on September 24, 2004.

A handwritten signature in cursive script, reading "Laurie J. Weiss", is written over a horizontal line.

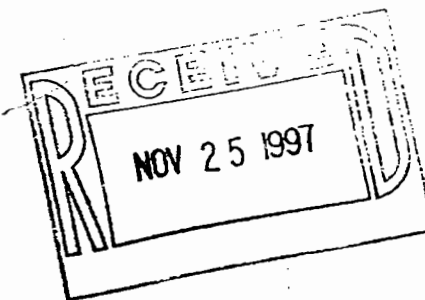
LAURIE J. WEISS

F.S.I.M.
FOOD SERVICES INSURANCE MANAGERS, INC.

3300 Douglas Blvd., Suite #295
Roseville, CA 95661
(916) 769-0493

November 24, 1997

Mr. Kevin Jefferies
FRONTIER INSURANCE
195 Lake Louise Marie Road
Rock Hill, New York 12775-8000



Dear Mr. Jefferies,

Thank you for your interest in doing business with F.S.I.M. As promised during your conversation with Dwight Halvorson, this morning, I have attached a ***“Program Explanation & Proposal of Underwriting Authority Parameters”*** binder for your review and reference.

Please note that this is the same binder that we gave to Cal Comp in our quest for underwriting authority (which should be granted shortly), and to other prospective “fronts”. Should you have any questions regarding the information within the binder, or desire further information, please do not hesitate to call me at 916-773-0206.

I have also attached to this cover a spreadsheet (“F.S.I.M. *“Controlled” Business, Historical Experience*”) and a copy of our third party claims servicing agreement.

Once again, thank you for your interest in working with us.

Sincerely,

George Hagosian
Vice President Marketing/Underwriting

cc : Dwight Halvorson

LOOK FOR
HALVERSON INS. ASSOC.
SUBMISSION → ^{AN} OVERNIGHT
TO KEVIN
GIVE TO JANET

F.S.I.M.

FOOD SERVICE INSURANCE MANAGERS, INC.

PROGRAM EXPLANATION

&

PROPOSAL

OF

UNDERWRITING AUTHORITY

PARAMETERS

PROPOSAL OF PROGRAM PARAMETERS

TABLE OF CONTENTS

<u>SECTION</u>	<u>CONTENT</u>
Section 1. Introduction	Dwight Halvorson Insurance Services Food Service Insurance Managers, Inc. FSIM Needs
Section 2. Risk Quality Analysis	
Section 3. Underwriting of the Program	Coverage Premium Requirements Submission/Underwriting File Content/Quality Risk Desirability Underwriting Criteria Underwriting Authority Audit(s) of Underwriting Authority
Section 4. Loss Control	
Section 5. Program Target Classifications	
Section 6. FSIM Book of Business Report	
Section 7. New Business Opportunities Jan. 1998	
Section 8. FSIM Resumes	

What F.S.I.M. Needs

- 1). Captive with FSIM as sole cell
- 2). Ability to establish separate cells for individual or group of accounts, where their experience would not be combined with original captive group of accounts.
- 3). Some Level of Underwriting, Pricing, and Binding Authority
(see Section 3. for suggested parameters)
- 4). Loss Control and Claim Management Services Unbundled.
- 5). Premium Audit to be provided by Carrier — NO
- 6). FSIM would be willing to issue policies: YES
- 7). Management Fees equal or near to those on MGA/Agency Own Captive sheet (attached)
- 8). Program structured without need for LOC — NO
- 9). Competitive Rates, Net of Commission YES
- 10). Agency Bill, Remitted Net of Management Fees
- 11). Program will involve unrelated risks, heterogeneous in nature, written throughout the year.
- 12). All risks to maintain their normal anniversary date.

MGA/AGENCY OWN CAPTIVE

REINSURANCE PARAMETERS :

- | | |
|--------------------|----------------------------------|
| a. specific excess | \$250K per claim for loss & alae |
| b. aggregate stop | 68% of standard prem. (gross) |

is this acceptable

EXPENSES :

- | | |
|------------------------------------|-------|
| a. fronting fee | 5.0% |
| b. premium tax allowance | 3.3% |
| c. federal excise tax | 0.0% |
| d. specific excess reinsurance | 4.0% |
| e. aggregate stop loss reinsurance | 4.0% |
| f. loss control fees to FSIM | 1.0% |
| g. claims management fees to FSIM | 6.0% |
| h. program management fees to FSIM | 12.0% |

?
-1.0%

18% MGA

*Any "gap" to be secured by pledge of interest income, rather than LOC

**All factors are NEGOTIABLE

***Additional 2% CAPTIVE MANAGEMENT FEE BEING CHARGED

Will have to negotiate

25,000 + 1% of investment assets!

RISK QUALITY ANALYSIS (RQA)

On every risk underwritten by FSIM, the RISK QUALITY ANALYSIS procedure will be conducted. It is a weighted grading of ten (10) subjective and objective risk elements, providing measurement standards by which risk quality can be determined.

The RQA process works to identify the degree to which an operation is committed to reducing and controlling its loss exposures. It distinguishes those risks that have a higher potential for profit. The RQA provides documentation to support underwriting decisions regarding scheduled credits and declinations. The RQA will also provide an insight into an accounts most pronounced service needs.

FSIM's focus is on accounts where the overall RISK QUALITY ANALYSIS or RQA Grade is "*EXCEPTIONAL*" or "*PREFERRED*". But, FSIM will also pursue accounts where the overall RQA Grade is "*AVERAGE*", when and where we can work with the customer to improve the grading.

FSIM's goal for an "*AVERAGE*" account is to improve profit potential by immediately integrating injury prevention and cost containment programs into its operations. Such action is likely to improve overall account quality analysis to "*PREFERRED*" or "*EXCEPTIONAL*".

While individual characteristics of an account may be "*DEFICIENT*" or "*UNFAVORABLE*" in RQA Grading, FSIM will identify specific factors that have the greatest impact on profitability. During the pre-quote stage FSIM Underwriting and Loss Control will determine if these identified factors can be improved through effective delivery of services.

Ultimately the RQA process will provide a comprehensive, and effective tool for underwriting in the acceptance and pricing process.

Copies of the FSIM RISK QUALITY ANALYSIS FORM , and THE RISK QUALITY ANALYSIS GRADING FORM, are provided following this page.

Insured :***F.S.I.M. RISK QUALITY ANALYSIS***

Risk Elements	Weight	Grade/Points					Total Points	
		E	P	A	D	U	Weight x Grade Point	
1. MANAGEMENT								
Safety Program	5	5	4	3	2	1		
Accountability/Involvement	10	5	4	3	2	1		
2. MANAGEMENT EXPERIENCE								
Years in Business	1	5	4	3	2	1		
Loss Handling/Prevention	4	5	4	3	2	1		
3. EMPLOYMENT PRACTICES	5	5	4	3	2	1		
4. TRAINING PRACTICES	5	5	4	3	2	1		
5. TURNOVER RATIO	10	5	4	3	2	1		
6. WAGE LEVEL	10	5	4	3	2	1		
7. BENEFITS	10	5	4	3	2	1		
8. FIT IN CLASS	10	5	4	3	2	1		
9. EXPOSURE								
Workplace Conditions	5	5	4	3	2	1		
Equipment	5	5	4	3	2	1		
Material Handling	5	5	4	3	2	1		
Repetitive Motion	5	5	4	3	2	1		
Industrial Hygiene	5	5	4	3	2	1		
10. CLAIM MANAGEMENT								
Claim Reporting	2	5	4	3	2	1		
Preferred Med. Provider	1	5	4	3	2	1		
Modified Duty/RTW	2	5	4	3	2	1		
TOTALS	100							

RISK QUALITY GRADING SCALE

Risk Quality Grade = _____

Exceptional (E) = 456 to 500

Preferred (P) = 356 to 455

Average (A) = 256 to 355

Deficient (D) = 156 to 255

Unfavorable (U) = 100 to 155

Comments :

F.S.I.M. RISK QUALITY ANALYSIS

Insured : _____

Date Prepared : _____

Prepared by : _____

Risk Quality Grading

Exceptional (E)

Preferred (P)

Average (A)

Deficient (D)

Unfavorable (U)

F.S.I.M. RISK QUALITY ANALYSIS

<u>RISK ELEMENTS</u>	<u>GRADE</u>	<u>GRADE DEFINITION</u>
<i>I. MANAGEMENT</i>		
Safety Program	E	Strong, established Safety Program. Management anticipates hazards & builds controls into plans. Commitment to quality, employee involvement in safety matters, positive attitudes exhibited at operation.
	P	Established Safety Program. Formal Safety Program has active management support.
	A	Informal Safety Program. Aware of major exposures. Rely upon and respond to loss control for solutions and/or recommendations to improve safety program.
	D	Existing Safety Program not effective/not understood. Some exposures not addressed by controls and/or management.
	U	Lack of awareness toward basic safety controls. Employees not aware or not required to operate under safe conditions.
COMMENTS :		

Accountability/Involvement	E	Senior management and all other levels of management are held accountable for safety results. Safety results monitored or highly publicized throughout the operation.
	P	Managers and supervisors held responsible for safety results.
	A	Supervisors may be responsible for safety but not held accountable for results.
	D	Managers/Supervisors performance is tied to production with little or any safety results included.
	U	No accountability or safety policy in place.
COMMENTS :		

2. MANAGEMENT EXPERIENCE

Years in Business	E	More than 10 years
	P	6 to 10 years
	A	3 to 6 years
	D	1 to 3 years
	U	Less than 1 year

COMMENTS :

Loss Handling/Prevention	E	Loss trends indicate that Senior Management has enforced and exercised influential control over loss prevention. Safety Program is effective. Safety Incentive Program exists.
	P	Loss trends indicate active risk management. All current incident loss occurrences are reviewed. Management very active in loss review.
	A	Loss trends indicate that corrective actions not entirely effective. Losses addressed, Reactive to loss.
	D	Loss trends indicate ineffective or sporadic ability to influence loss activity. Casual awareness of past loss experience, low interest in controlling future activity.
	U	Loss trends indicate frequency or severity that could have been prevented. Little if any interest in affecting future activity. Poor knowledge of past loss activity.

COMMENTS :

3. EMPLOYMENT PRACTICES E

Candidate screening includes verification of application information and demonstration of most critical skills.

P

Reference checks to verify employment, history & experience. Knowledge, skills and experience judged. Union hiring permits choice of individual based on skill or prior knowledge.

A

Minimum job skill requirements identified and used for hire. Union hiring requirements preclude selection by skill level.

D

Candidate screening through application and general interview. No background, experience or reference checks.

U

No formal screening process. "Walk-ins".

COMMENTS :

4. TRAINING PRACTICES

E

Covers ALL pertinent operational & safety topics. Regular, periodic training provided. All training documented.

P

New Employees & Employees moving to new position receive General Policy training. Continued training based upon Manager/Supervisor's identified skill deficiency and/or claim. Training documented.

A

Formal, documented new hire orientation, position specific training provided. Training provided to maintain skills and address new and/or changing exposures. Ongoing training not conducted on regular basis, may not be documented, and/or employee attendance may be optional.

D

Some new hire orientation. No formal training or guidance to ensure correct performance of job tasks.

U

Little or no orientation for new hire. No Formal training or guidance to ensure correct performance of job tasks.

COMMENTS :

5. *TURNOVER RATIO*

- | | |
|---|--|
| E | 25% less than typical, for annual employees. Seasonal employees return with no more than 20% change. |
| P | 10 to 25% less than typical for industry and region, for annual employees. Seasonal employees return with no more than 35% change. |
| A | Typical for industry and region |
| D | 10 to 25% higher than typical for industry for annual employees. Few Seasonal employees return. |
| U | 25% higher than typical for industry for annual employees. Few Seasonal employees return. |

COMMENTS :

6. *WAGE LEVEL*

- | | |
|---|--------------------------------------|
| E | 30% or more above average class wage |
| P | 15 to 30% above average class wage |
| A | Average Class wage |
| D | 15 to 30% below average class wage |
| U | 30% or more below average class wage |

COMMENTS :

7. *BENEFITS*

- | | |
|---|--|
| E | Medical benefits, sick leave, short term/long term disability programs, vacation, available for all employees at time of hire or following probation period not to exceed 90 days. |
| P | Medical benefits, sick leave, disability programs available to all employees following hire by time on the job not to exceed 6mos. |

(Benefits, Con't)	A	Medical benefits, sick leave, disability programs availability limited based on defined eligibility requirements (i.e. time on the job exceeding 6 mos., or job position)
	D	Benefit Package Available following time on the job requirement which exceeds 6mos, or for only Annual employees (seasonal employees excluded).
	U	No benefit package available.

COMMENTS :

8. FIT IN CLASS

E	Does not have hazardous exposures that are contemplated in class.
P	Has fewer operations than defined in class
A	Has most operations defined in class
D	Has all exposures defined in class
U	Has all exposures contemplated in class as well as additional hazardous exposures NOT contemplated in class. Or may have a heavier weight of hazardous exposure than contemplated in class.

COMMENTS :

9. EXPOSURE

Workplace Conditions

E	Excellent housekeeping. No fall exposure
P	Continual clean-up, designated storage areas; well arranged process flow.
A	Limited debris, scheduled clean-up, aisles clear. All walking surfaces well maintained. Fall exposures controlled.

(Workplace, Con't)	D	No regular clean-up, no designated storage areas; slippery or uneven surfaces.
	U	No attention paid to housekeeping or layout; uncontrolled fall exposure

COMMENTS :

Equipment	E	State of the Art, with redundant guarding. All lockout procedures followed. Scheduled maintenance procedures followed and documented.
	P	Some State of the Art equipment with redundant guarding. Scheduled maintenance procedures followed and documented.
	A	Points of operation and drive mechanisms guarded on high hazard equipment. Scheduled maintenance procedures followed and documented.
	D	Points of operation and drive mechanisms partially guarded on high hazard equipment. Partial lockout procedures followed. Unscheduled maintenance only..
	U	Unprotected points of operation or drive mechanisms on high hazard equipment. No lockout procedures. No preventative inspection or maintenance program.

COMMENTS :

Material Handling	E	None, or minimal material handling activities requiring no lifting over 15 lbs.
	P	Heavy degree of automation for material handling, appropriate equipment available and used.
	A	Some material handling automated. Appropriate equipment available and use usually enforced.

(Material Handling, Con't)

- D Moderate exposures. Aids not readily available or used.
- U Tasks require excessive lifting. NO lifting aids.

COMMENTS :

Repetitive Motion

- E No repetitive motion activities.
- P Intermittent performance of well designed task.
- A Intermittent performance of poorly designed tasks or continual performance of well designed tasks.
- D Continual performance of poorly designed tasks, small portion of workforce exposed.
- U Continual performance of poorly designed tasks, large portion of workforce exposed.

COMMENTS :

Industrial Hygiene

- E Very minor exposure to hazardous substances, noise, temperature extremes, etc...
- P Occasional exposure to limited number of employees. Excellent controls.
- A Exposure to hazardous substances, noise, temperature extremes. Basic controls in place.
- D Uncontrolled exposure to hazardous substances, noise, temperature extremes, etc... Less than 25% of workforce exposed.
- U Uncontrolled exposure to hazardous substances, noise,

(I.H., Con't)

temperature extremes, etc... More than 25% of the workforce exposed.

COMMENTS :

10. CLAIM MANAGEMENT

Claim Reporting	E	Notice of claim faxed in, 800 # used. Single employee or department handles on priority basis. 0 to 3 day reporting.
(Claim Reporting, Con't)	P	Single employee or department handles on priority basis. Reported within 7 days.
	A	Single department assigned responsibility. Procedures in place. Reported within 13 days.
	D	Department or individuals' other responsibilities take priority over claim reporting. Reported within 20 days.
	U	No set procedures. Claim reporting done on a batch basis. Reported over 20 days.

COMMENTS :

Preferred Medical Provider	E	Provider evaluated prior to selection. Excellent relationship. Full utilization of services, performance monitored.
	P	Various components partially in place, evidence of effective relationship.
	A	Partial use of preferred provider. No tracking or follow-up.
	D	Posted but no direction or control.
	U	No direction, Not Posted.

(Preferred Med. Provider, Con't)
COMMENTS:

Modified Duty/Return to Work	E	Formal & effective written program. Job analyses completed in advance for most positions.
	P	Job analyses completed in advance for some specific sectors of employee population. Effective program in place.
	A	Modified duty when convenient. Job analyses completed when requested.
	D	Refusal to create modified duty tasks.
	U	No belief in concept or desire to pursue.

COMMENTS :

OVERVIEW/ADDITIONAL COMMENTS :

Insured :

F.S.I.M. RISK EXPERIENCE ANALYSIS

<u>Valuation</u>	<u>Carrier</u>	<u>Policy</u>	# of	=	S Total	S Total
<u>Date</u>	<u>Name</u>	<u>Year</u>	<u>Cls.</u>	<u>Open</u>	<u>Incurrd</u>	<u>. Paid</u>
Totals						
Averages						

Large Losses (over \$25.000)

[illegible]

Underwriting Loss Analysis Narrative :

Loss Type Expected in class? Shock Loss? Preventable/Controllable? Corrective Action, Service Impact.

COVERAGE

- * Standard Workers' Compensation Form. Annual Policy.
- * All policies will be quoted/issued on guaranteed cost (non-par) basis.
- * USL&H or FELA on Incidental basis only.
- * Employer Liability Limits \$1,000,000/\$1,000,000/\$1,000,000
- * Broad Form All States Endorsement, when and where applicable at no additional charge.
- * All policies will be 12 month term.

PREMIUM REQUIREMENTS

\$50,000 Minimum Premium

\$150,000 + Preferred premium for most classes.

\$250,000 Minimum Premium for "Ag Haulers"

Majority of FSIM book will be comprised of risks with premium of \$150,000+.

Risks with premium under \$150,000 will be considered on an "exception", or "accommodation" basis.

SUBMISSION/UNDERWRITING FILE CONTENT & QUALITY

All producers representing FSIM are required to furnish FSIM Underwriting with the following minimum information,

- 1). Complete Accord Application
- 2). Detailed description of operations
- 3). Minimum of 3 years, currently valued loss runs
- 4). Experience Modification Worksheet(s)
- 5). Four (4) year payroll history

The FSIM underwriter is required to maintain a quote file, which will include and organize the above information. The quote file will also include the following,

- 1). All RISK QUALITY ANALYSIS forms (see Section 2.)
- 2). Risk Experience Analysis form.
- 3). Large Claim Detailed Summary or Large Claim Status Reports
- 4). Loss Control Survey Report
- 5). All pricing worksheets and correspondence.

For quotes that are not accepted, the quote file will be saved, and documented as to outcome and rational.

For quotes that are accepted, Policy Files will be assembled and maintained by the FSIM underwriter. All content from the quote file will be transferred. In addition the Policy File will contain the following,

- 1). The Policy
- 2). Binders
- 3). Endorsements
- 4). Audits
- 5). Correspondence (includes notes from underwriter to file)
- 6). Loss Control Reports
- 7). Loss Runs

RISK DESIRABILITY

Desirability will be assessed through a weighted grading of a number of subjective and objective measurement standards, the FSIM RISK QUALITY ANALYSIS (Section 2). Our underwriting goal is to reduce uncertainty and maintain or improve results through informed, detailed and documented decisions.

Utilizing RISK QUALITY ANALYSIS, FSIM will focus on accounts with controllable exposures based upon frequency, not severity. Targeting those insureds who have clearly expressed a desire to work with an insurance carrier.

FSIM's basic underwriting constant is that Predictable and controllable loss exposures give us the greatest profit potential and provide us with an opportunity to leverage our service expertise. Most all exposures found in FSIM's targeted classifications are identifiable and controllable.

Many of the accounts involved in the Food Industry will have season fluctuations in employment needs. Recognizing the work force norms, in this industry, FSIM will work only with operations that are currently, or will immediately commit to,

- 1). Utilize aggressive "up front" employee pre-screening practices
- 2). Provide training of all workers and rigid enforcement of safe operational practices.
- 3). Actively participate with their insurance partner in post-loss investigation and worker management tasks focused on returning injured employees to the job in a temporary or permanent modified duty basis.

UNDERWRITING CRITERIA

- 1). Program Target Classifications Only
- 2). Adherence to Premium Requirements
- 3). Complete Submission
- 4). Physical Loss Control Survey on all accounts of \$100,000 plus
- 5). Completed Loss Control Survey Report on all accounts of \$100,000 plus
- 6). If loss frequency and severity minimal, loss ratios under 50% for past 3 years and loss trends are favorable, underwriter has ability to quote "subject to favorable loss control survey". "Subject to" issues must have loss control survey within 30 days following policy inception.
- 7). Quote only risks with PREDICTABLE and CONTROLLABLE loss exposures, based upon frequency not severity.
- 8). Complete RISK QUALITY ANALYSIS (see Section 2) on every risk.
Update RQA at every renewal.
- 9). Quote those risks with RQA grading of "EXCEPTIONAL", "PREFERRED", or "AVERAGE" only.
- 10). All accounts of \$150,000 plus will have Underwriter physically survey risk.
- 11). New Ventures acceptable if,
 - a). "Split Off" from current company, or
 - b). Management has had experience in same business @ another company for 10 years or more.
- 12). "Ag Haulers" \$250,000 Minimum Premium, NO Sub-haulers, Loss Ratios under 50% for past 3 years, just to be considered for Underwriting analysis.
- 13). All accounts in excess of \$150,000 to be reviewed and signed off by FSIM Underwriting V.P.

UNDERWRITING AUTHORITY

FSIM needs to have the ability to quote and bind coverage, consistent with the established Underwriting criteria (preceding page), and within the perimeters suggested below,

1). BY HAZARD GROUP (copy of CA Hazard Group following this section),

<u>Hazard Group</u>	<u>RQA GRADE</u>	<u>AUTHORITY LEVEL</u>
A, B, C	"Exceptional", "Preferred" or "Average"	Full Underwriting Authority Pricing & Binding Authority
A, B, C	"Deficient" or "Unfavorable"	DECLINE
D & Above	"Exceptional", "Preferred" or "Average"	No U/W Authority FSIM Underwrites, forward to Fronting Carrier Underwriter for approval. No Binding Authority
D & Above	"Deficient" or "Unfavorable"	DECLINE

2). BY PREMIUM SIZE

<u>Premium Range</u>	<u>RQA Grade</u>	<u>Authority Level</u>
\$50,000 - 75,000	Exceptional Preferred	Full Underwriting Authority Pricing and Binding Authority 30% Max. Sched. Credit
\$50,000 - 75,000	Average	Limited U/W Authority Pricing & Binding Authority 15% Max Sched. Credit Refer to Fronting Carrier U/W for additional credit.

Premium Range	RQA GRADE	AUTHORITY LEVEL
\$50,000 - 75,000	Deficient Unfavorable	DECLINE
\$75,001 - 99,999	Exceptional Preferred	Full U/W Authority Pricing & Binding Authority 50% Max Sched. Credit
\$75,001 - 99,999	Average	Limited U/W Authority Pricing and Binding Authority 40% Max Sched. Credit Refer to Fronting Carrier U/W for additional credits.
\$75,001 - 99,999	Deficient Unfavorable	DECLINE
\$100,000 - 500,000	Exceptional Preferred	Full Underwriting Authority Pricing & Binding Authority 65% Max Sched. Credit
\$100,000 - 500,000	Average	Limited U/W Authority Pricing & Binding Authority 55% Max Sched. Credit Refer to Fronting Carrier U/W for additional credits
\$100,000 - 500,000	Deficient Preferred	DECLINE
Over \$500,000	Exceptional Preferred	Limited U/W Authority No Binding Authority FSIM Underwrite & Price 55% Max Credit Submit to Fronting Carrier U/W for approval.

Premium Range	RQA GRADE	AUTHORITY LEVEL
Over \$500,000	Average	Limited U/W Authority No Binding Authority FSIM Underwrite & Price 45% Max Credit Submit to Fronting carrier U/W for additional credits and/or approval.
Over \$500,000	Deficient Unfavorable	DECLINE

Consistent with, and confined to authority levels, notice of all bound accounts will be sent to fronting carrier underwriter. Policy Issuance Notification Form will be developed to help this process.

Notification of all non-renewal action will be sent to fronting carrier underwriter.

There is no authority assumed in regards to Transportation exposure. Land Travel Questionnaire and/or Aircraft Questionnaire will be provided to fronting carrier underwriter for reinsurance quote.

CALIFORNIA RETROSPECTIVE RATING PLAN
TABLE OF CLASSIFICATIONS BY CALIFORNIA HAZARD GROUP
Effective January 1, 1997

APPENDIX B

Table 1

Page 1 of 2

Code No.	Hazard Group	Code No.	Hazard Group	Code No.	Hazard Group	Code No.	Hazard Group	Code No.	Hazard Group	Code No.	Hazard Group
0005	C	2106	D	2852	C	3501	B	4150	B	4670	C
0016	C	2107	B	2881	C	3507	B	4239	B	4683	G
0034	C	2108	E	2883	C	3560	B	4240	C	4691	B
0035	E	2109	C	2915	F	3566	B	4243	C	4692	B
0036	C	2111	C	2923	B	3567	B	4244	E	4717	C
0038	D	2113	D	2960	D	3568	B	4250	D	4720	C
0040	B	2116	H	3004	B	3569	B	4251	C	4740	D
0041	C	2117	G	3018	C	3570	B	4279	C	4743	D
0042	C	2121	B	3022	E	3572	B	4283	C	4757	B
0044	B	2142	B	3028	B	3573	B	4286	C	4771	F
0045	C	2150	C	3030	D	3574	A	4295	C	4823	B
0050	C	2163	C	3039	D	3577	B	4297	B	4829	C
0079	I	2211	F	3040	D	3578	B	4299	B	4831	C
0103	C	2222	C	3060	B	3579	B	4304	B	4922	B
0104	D	2362	G	3066	B	3612	B	4312	E	4983	A
0106	F	2402	D	3070	A	3620	C	4350	C	5020	C
0171	C	2413	G	3076	C	3632	B	4351	A	5022	F
0172	H	2501	C	3081	F	3634	B	4354	A	5027	F
0251	F	2503	C	3082	C	3643	B	4360	B	5028	F
0400	C	2532	C	3085	G	3647	G	4361	B	5040	E
0401	C	2570	C	3099	A	3651	B	4362	E	5057	D
1122	E	2571	C	3110	D	3681	B	4410	C	5059	E
1123	E	2576	C	3111	C	3719	H	4414	D	5102	D
1124	E	2578	B	3131	A	3724	C	4420	C	5107	D
1320	C	2584	D	3146	C	3726	B	4431	B	5108	D
1322	I	2585	D	3152	A	3805	B	4432	B	5123	A
1330	E	2586	G	3165	C	3807	D	4470	D	5140	C
1438	C	2589	D	3169	D	3808	A	4478	C	5146	C
1452	D	2623	C	3175	B	3815	B	4492	B	5160	B
1463	C	2660	H	3178	B	3821	E	4494	C	5183	C
1624	B	2683	G	3179	B	3823	B	4495	C	5184	F
1699	F	2688	D	3180	C	3830	E	4496	C	5185	C
1701	E	2702	H	3220	B	3831	B	4497	C	5186	C
1710	C	2710	C	3224	B	3840	B	4498	C	5187	C
1741	D	2727	H	3241	C	4000	E	4499	C	5188	C
1803	E	2731	C	3255	B	4034	C	4511	B	5190	B
1925	D	2757	D	3257	C	4036	C	4512	B	5191	B
2002	C	2759	D	3300	B	4038	C	4557	C	5192	B
2003	D	2790	B	3339	G	4041	F	4558	B	5195	B
2014	D	2797	B	3365	B	4049	E	4567	H	5200	D
2030	B	2806	C	3372	D	4111	A	4568	D	5201	D
2063	C	2812	C	3373	B	4112	A	4611	C	5205	D
2081	D	2819	D	3383	C	4114	G	4623	C	5207	C
2095	C	2840	C	3400	C	4130	B	4635	E	5212	C
102	B	2842	E	3401	B	4133	C	4665	B	5213	F

CALIFORNIA RETROSPECTIVE RATING PLAN
TABLE OF CLASSIFICATIONS BY CALIFORNIA HAZARD GROUP
Effective January 1, 1997

APPENDIX E
Table 1
Page 2 of 2

Code No.	Hazard Group	Code No.	Hazard Group	Code No.	Hazard Group	Code No.	Hazard Group	Code No.	Hazard Group	Code No.	Hazard Group
5214	E	6220	F	7520	D	8103	D	8745	C	9050	D
5222	H	6223	C	7538	E	8105	B	8745	D	9053	C
5225	F	6233	E	7539	D	8106	B	8748	E	9060	B
5348	C	6235	H	7580	D	8107	A	8755	I	9061	C
5403	E	6237	D	7600	G	8110	D	8800	C	9066	C
5432	F	6251	H	7601	I	8111	C	8801	C	9067	C
5436	E	6252	H	7605	B	8113	D	8805	C	9069	C
5443	C	6254	F	7606	B	8116	B	8804	G	9070	G
5445	F	6258	C	7607	C	8117	C	8806	A	9078	C
5446	F	6306	F	7610	C	8204	D	8807	B	9079	A
5447	F	6307	F	7706	E	8209	G	8808	C	9085	E
5462	B	6308	F	7707	F	8215	E	8810	C	9092	C
5467	B	6315	E	7720	H	8227	C	8813	B	9096	G
5470	B	6316	E	7721	E	8232	C	8817	C	9097	G
5473	D	6319	E	7722	D	8264	B	8818	C	9101	G
5474	H	6325	F	7855	H	8265	H	8820	G	9151	C
5479	E	6361	F	8001	B	8267	E	8822	G	9154	A
5480	H	6364	C	8004	C	8278	B	8823	D	9155	A
5482	H	6400	C	8006	B	8286	C	8827	H	9156	C
5484	H	6504	C	8008	B	8290	E	8829	G	9180	B
5485	H	6834	B	8013	E	8291	D	8830	C	9181	G
5506	E	7133	E	8015	C	8292	E	8831	A	9182	B
5507	F	7198	A	8017	B	8293	F	8834	E	9184	D
5538	B	7207	D	8018	C	8304	C	8838	A	9185	D
5542	D	7219	H	8019	B	8324	D	8839	B	9220	C
5551	I	7232	D	8021	G	8350	E	8840	B	9402	F
5552	I	7248	D	8023	C	8387	B	8846	B	9403	D
5553	I	7272	F	8031	B	8388	B	8847	E	9410	H
5606	C	7332	F	8032	C	8389	B	8850	C	9420	H
5630	E	7360	F	8039	B	8390	B	8851	G	9422	D
5631	F	7365	F	8041	G	8391	B	8852	B	9424	C
5632	F	7382	H	8042	C	8392	E	8859	C	9425	F
5633	H	7392	C	8046	B	8393	C	8868	C	9501	E
5645	F	7403	B	8057	C	8397	B	8875	I	9507	C
5650	C	7405	A	8059	C	8400	C	8901	I	9516	D
5697	H	7409	D	8060	C	8500	E	9007	G	9519	D
5703	E	7410	D	8061	G	8601	B	9008	G	9521	E
5951	A	7413	D	8062	C	8604	D	9009	E	9522	D
6003	F	7419	D	8063	B	8631	F	9010	E	9529	F
6011	D	7421	B	8064	C	8710	C	9011	E	9545	C
6204	E	7424	B	8065	C	8719	D	9015	E	9549	D
6206	F	7426	D	8066	B	8720	F	9016	B	9552	F
6213	E	7428	A	8070	B	8729	E	9031	C	9586	D
6216	F	7429	G	8071	B	8740	E	9033	E	9610	C
6217	F	7500	C	8079	C	8741	E	9043	D	9620	D
6218	F	7515	D	8102	B	8742	C	9043	B		

AUDIT(S) OF UNDERWRITING AUTHORITY

Fronting carrier will have full access to all FSIM Underwriting Quote and Policy files.

For the first twelve (12) months, quarterly audits of all existing "inforce" accounts, risks quoted, new business issued, and renewals would be conducted at FSIM office. FSIM would also be willing to send a predetermined number of files to fronting carrier's location. At audits conducted at FSIM office, Underwriting, Loss Control, and Claim Management personnel would be available, as necessary.

If all quarterly audits suggest full compliance to agreed upon terms, business quality and performance is consistent with profit expectations, FSIM would like to move Underwriting Authority Audit frequency to once every six (6) months.

On a monthly basis, FSIM will provide the fronting carrier with,

- 1). Inforce Policy Listing
- 2). Quote Log (notes Issued, Lost, Declined)
- 3). Large Loss Analysis
- 4). Significant Service Accomplishments

LOSS CONTROL SERVICES

FSIM will provide all loss control services to accounts written in the captive. The department will be staffed with people who have demonstrated long term experience in the food industry and have had extensive experience in loss prevention. In addition the majority of **FSIM** loss control representatives will have bi-lingual capabilities (both verbal and written).

Loss Control representatives will work closely with Underwriting and Claims and shall be trained in **FSIM RISK QUALITY ANALYSIS** procedures. Loss control representatives will report to **FSIM'S** Vice President of Loss Control.

On all accounts of \$100,000 or above, Physical Loss Control Survey will be conducted. The Loss Control representative will complete a Loss Control Survey Report (copy following this narrative) on each risk of \$100,000 or more. It will be reviewed by the **FSIM** underwriter, and will be assimilated into the **RQA**.

Representatives will focus on accident trends and design action for long term solutions. Results (and service needs) will determine service intensity and time allocation by account. Following every visit, a "follow-up" letter will be sent summarizing the visit, accomplishments, hazard identification (if any), trends, strategy effectiveness, and or recommendations. Copy of this letter will be forwarded to **FSIM** underwriting and kept in the **FSIM** underwriting file.

Representatives will be responsible for developing Objectives and Service Strategies which will be incorporated (along with Claim Management Objectives and Strategies) into the **FSIM SERVICE AGREEMENT** (copy following this narrative).

The Loss Control Representative, Underwriting VP, Claim Management VP, Claim Adjuster, and producer will receive copies of the agreement and shall all monitor the **FSIM SERVICE AGREEMENT** on a monthly basis, and update it as necessary.

During the risk selection process, Loss Control will focus upon **FSIM's** risk desirability standards, those accounts with controllable exposures based upon frequency not severity, and targeting those insureds who have clearly expressed a desire to work with an insurance carrier.

Loss Control will fully support **FSIM's** basic underwriting constant that *Predictable and controllable loss exposures give us the greatest profit potential and provide us with an opportunity to leverage our service expertise.*

On renewal accounts, a pre-renewal survey will be conducted 90 to 45 days prior to effective date. The Loss Control Representative will work closely with the **FSIM** underwriter to prepare a renewal **RQA**.

Loss Control Representative will also;

- * Participate in/at Claim Reviews
- * Participate in/at New & Renewal Proposal Presentations
- * Conduct or Participate in Educational Seminars or Workshops for **FSIM** insureds.
- * Be provided with Loss Runs on a monthly basis and be expected to review this with the Insured.
- * Participate in/at Safety Committee Meetings and/or "Tailgate Safety Meetings".
- * Conduct specific safety training.
- * "train the trainers"; educating the Supervisors/Foremen in managing a safe work environment.

In regards to the **TARGET EMPLOYER PROGRAM** (accounts having ExMods of 125+). **FSIM** and "fronting carrier" should make a joint effort to comply with the program. **FSIM** Loss Control will create, establish, administer, and monitor a Formal Action Plan, in compliance with the State requirements. This information will be coordinated back through "fronting carrier" who, will in turn, respond to th State.

F.S.I.M. LOSS CONTROL SURVEY REPORT

ACCOUNT: _____
CONTACT: _____ DATE OF CONTACT _____
PREPARED BY: _____

PART I. RISK OVERVIEW

1. Loss Trend Analysis

2. Safety Program

3. Strength(s)

4. Weakness(es)

F.S.I.M. LOSS CONTROL SURVEY REPORT

Account: _____

PART II. RISK DETAIL

1. Exposure

Workplace Conditions: (Housekeeping, Clean-up, Slip/Fall Exposure?)

Equipment: (State of the Art?, Maintenance Procedures)

Material Handling: (Degree of Automation, Lifting #lbs, Aids?)

Repetitive Motion: (Tasks well designed?, Warm-ups?, Rest?, Rotation?)

Industrial Hygiene: (Hazardous Substances?, Noise?, Temperature Extremes?)

F.S.I.M. LOSS CONTROL SURVEY REPORT

Account: _____

PART III. CONCLUSION

1. Loss Control Service Plan: Condition/Suggestion(s)

THE F.S.I.M. SERVICE AGREEMENT

for

(NAMED INSURED)

Workers' Compensation Insurance Policy Period April 1, 1997 to April 1, 1998

At *F.S.I.M.* we understand that workers' compensation COST REDUCTION is a "Team Effort". This Service Agreement is our Team's "Game Plan" for the policy period identified above.

It is written confirmation of *F.S.I.M.*'s Service Commitments. It will list objectives, outline service strategies, establish responsibility and provide target "due dates".

F.S.I.M. Service personnel will be held accountable for adherence to these commitments.

This Service Agreement is not a finished product. Periodically, it will be revised to reflect completion dates and effectiveness of service. It will adapt or react to changes in your situation. New Objectives or New Strategies/Commitments may need to be developed and included during the policy year. Any modification to this original agreement will be based upon mutual consent and consultation. A copy of all revisions will be sent to you.

THE F.S.I.M. SERVICE PLEDGE

All *F.S.I.M.* Service and Management personnel will monitor this Service Agreement, and any subsequent revisions, on a monthly basis to ensure compliance with all service commitments.

Dwight Halvorson
President, *F.S.I.M.*

Dan Henke
Vice President Claims

George Flagosian
Vice President Marketing/Underwriting

THE F.S.I.M. SERVICE AGREEMENT

for

INSURED: _____

POLICY PERIOD : _____
 AGREEMENT ESTABLISHED : _____ AGREEMENT REVISED : _____
 AGENT : _____
 LOSS CONTROL : _____
 CLAIM MANAGEMENT CONTACT : _____

OBJECTIVE :

STRATEGY	RESPONSIBILITY	DUE DATE	COMPLETED	EFFECTIVENESS
1.				
2.				
3.				

OBJECTIVE:

STRATEGY	RESPONSIBILITY	DUE DATE	COMPLETED	EFFECTIVENESS
1.				
2.				
3.				

OBJECTIVE:

STRATEGY	RESPONSIBILITY	DUE DATE	COMPLETED	EFFECTIVENESS
1.				
2.				
3.				

F.S.I.M. Qualifying Classes - CALIFORNIA

4/9/97

<u>Class Description</u>	<u>Class Code</u>
Aircraft Operations, Transport. of Personnel	7421
Bakeries & Cracker Mfg	2003
Beer or Ale Dealers	7392
Bottling - Beverages - No spirituous liquors	2163
Breweries or Malt Houses - Including Bottling/Canning	2121
Bush Berry Crops	0079(2)
Canneries - Fish	2113
Canneries, NOC - Including Fruit preserving	2111
Clerical Office Employees, NOC	8810
Confections & Food Sundries, Mfg. or Processing, NOC	6504
Cotton Farms	0044
Cotton Gin Operation	0401
Cotton Merchants	0400(1)
Cottonseed Oil Mfg. & Refining	4683(2)
Creameries & Dairy Products Mfg.	2063
Dairy Farms	0036
Distilling, NOC	2142(2)
Feed Mfg. - Preparing & Compounding Feeds for Livestock & Poultry	2014(2)
Feed Yards	0038(2)
Field Crops	0171
Fruit - Citrus Fruit packing & handling; Including Storage	2108
Fruit - Dried Fruit packing & handling	2109
Fruit - Fresh Fruit packing & handling; Including Storage	2107
Fruit Juice or Concentrate Mfg.	2116
Fruit or Vegetable Evaporation or Dehydrating	2102
Grain Elevators or Grain Storage Warehouses	8304
Grain or Rice Milling	2014(1)
Hay, Grain or Feed Dealers	8215(1)
Macaroni Mfg.	2002
Meat Products Mfg. - NOC, Including Canning	2095
Olive Handling - Sorting, curing, packing, canning including Olive Oil Mfg.	2106(1)
Orchards - Citrus & Deciduous Fruits	0016
Orchards - Nut Crops	0045

F.S.I.M. Qualifying Classes - CALIFORNIA

PAGE TWO

4/7/97

<u>Class Description</u>	<u>Class Code</u>
Pickle Mfg.	2106(2)
Potato Crops	0041
Poultry Raising, Egg Production & Hatcheries	0034(1)
Restaurants or Taverns - All Employees	9079(1)
Salespersons - Outside	8742(1)
Salt Production - by solar evaporation exclusively	4000(3)
Seed Merchants - Including operation of seed sorting machinery	8102
Sheep Raising & Hog Farms	0034(2)
Stock Farms	0038(1)
Stockyards - with/without butchering	2081(2)
Stores - Delicatessen - retail	8006(3)
Stores - Feed, tack & farm supplies - retail	8117
Stores - Fruit or Vegetables - retail	8006(2)
Stores - Groceries or provisions - convenience - retail	8061
Stores - Groceries or provisions - retail	8006(1)
Stores - Meat, fish or poultry - retail	8031
Stores - Meat, fish or poultry - wholesale	8021
Stores - Retail, NOC	8017(1)
Stores - Wine, beer or spirits - retail	8060
Stores - Wine or spirits - wholesale, including blending, rectifying, distilling or bottling	8041
Strawberry Crops	0079(1)
Sugar Mfg. or Refining - beet or cane	2030
Truck Farms	0172

F.S.I.M. Qualifying Classes - CALIFORNIA

PAGE THREE

4/7/97

<u>Class Description</u>	<u>Class Code</u>
Vegetable or Fruit Processors - Frozen	2117
Vegetables - Fresh vegetable and tomato packing and handling - including storage	8209
Vending Concessionaires - Dispensing food, drinks, candy, etc., at ball parks, race tracks, theaters & exhibitions	9079(2)
Vineyards	0040
Vitamin or Food Supplement Mfg. - compounding, blending or packaging only	4831
Vinegar Mfg.	2142(3)
Warehouses - Cold Storage	8291
Warehouses - Cotton, including cotton compressing "cotton gin operation"	0400(2)
Warehouses - Grain or bean - including cleaning & handling	8215(2)
Wineries - All operations	2142(1)

F.S.I.M

**BOOK OF BUSINESS REPORT
OCTOBER 1997**

REPORT KEY

F.S.I.M. TOTAL : refers to all F.S.I.M. business

Section 1. BOOK OF BUSINESS REPORT : Account, Producer, Policy #, EAP, Earned Premium

Section 2. MONTHLY RESULTS REPORT : Claim Cost/Severity, Loss Ratio

Loss Ratio = \$Claims divided by Earned Premium

Losses Valued as of September 30, 1997

Earned Premium as of September 30, 1997

F.S.I.M. Total Monthly Results Report

Account	Effec.	E.A.P.	Earned	Clm \$ Indemnity	Clm \$ Med	Clm \$ Rehab	Clm \$ Expense	Clm \$ Total	L/R
C&M Packing	1-Jan	\$ 43,900	\$ 24,811	\$ -	\$ -	\$ -	\$ -	\$ -	0%
Desert Packing	1-Jul	\$ 117,167	\$ 31,753	\$ -	\$ -	\$ -	\$ -	\$ -	0%
Emerald Packing	1-Jul	\$ 114,335	\$ 52,307	\$ 1,089	\$ 8,900	\$ 500	\$ -	\$ 10,489	20%
Escamilla	1-Jul	\$ 1,250,000	\$ 236,438	\$ 6,696	\$ 17,993	\$ 500	\$ 1,500	\$ 26,689	11%
Fresh West	28-Dec	\$ 123,923	\$ 98,523	\$ 4,813	\$ 16,849	\$ 500	\$ 1,000	\$ 23,162	24%
Growers Co.	1-Jul	\$ 385,574	\$ 116,511	\$ 2,600	\$ 5,050	\$ -	\$ -	\$ 7,650	7%
GVE	1-May	\$ 128,589	\$ 79,359	\$ -	\$ -	\$ -	\$ -	\$ -	0%
La Tapatia	31-Mar	\$ 178,529	\$ 109,940	\$ 3,414	\$ 8,652	\$ -	\$ -	\$ 12,066	11%
Sam McKinsey	1-Jan	\$ 48,802	\$ 43,919	\$ 264	\$ 1,269	\$ -	\$ -	\$ 1,533	4%
Mission Ranches	1-Jan	\$ 190,295	\$ 234,000	\$ 6,698	\$ 20,438	\$ 1,000	\$ 5,500	\$ 33,636	14%
Natural Selection	1-Jul	\$ 132,754	\$ 89,199	\$ 6,470	\$ 26,277	\$ 100	\$ 1,000	\$ 33,847	38%
Season	28-Jan	\$ 1,250,000	\$ 651,237	\$ 83,042	\$ 76,612	\$ 3,500	\$ 3,606	\$ 166,760	26%
Sunsweet Dryers	1-Jul	\$ 144,005	\$ 107,427	\$ 26,269	\$ 52,831	\$ 1,000	\$ 1,750	\$ 81,850	76%
Nature Quality	1-Jan	\$ 111,308	\$ 50,906	\$ 11,990	\$ 18,743	\$ 500	\$ 2,000	\$ 33,233	65%
Cal West Farming	18-Sep	\$ 650,500	\$ 88,260	\$ -	\$ -	\$ -	\$ -	\$ -	0%
Gudpak	30-Sep	\$ 115,150	\$ 11,515	\$ -	\$ -	\$ -	\$ -	\$ -	0%
F & F Contracting	1-May	\$ 286,529	\$ 143,268	\$ 3,268	\$ 15,396		\$ 500	\$ 19,164	13%
Sayler American	1-May	\$ 445,414	\$ 222,708	\$ 9,724	\$ 14,323		\$ 1,000	\$ 25,047	11%
SK Foods	1-May	\$ 121,403	\$ 60,702	\$ -	\$ 12,205	\$ -	\$ -	\$ 12,205	20%
Ramco	1-Apr	\$ 193,431	\$ 112,833	\$ -	\$ 214	\$ -	\$ -	\$ 214	0.2%
Rigel	1-Nov	\$ 259,154	\$ 25,915	\$ -	\$ -	\$ -	\$ -	\$ -	0%
TOTALS		\$ 6,290,762	\$ 2,591,531	\$ 166,337	\$ 295,752	\$ 7,600	\$ 17,856	\$ 487,545	18.8%
21 Accts									

October 1997

F.S.I.M. Total Monthly Results Report

Account	Effec.	E.A.P.	Earned	Clm # Open	Clm # Closed	Clm # Legal	Clm # Total
C&M Packing	1-Jan	\$ 43,900	\$ 24,811	0	0	0	0
Desert Packing	1-Jul	\$ 117,167	\$ 31,753	0	0	0	0
Emerald Packing	1-Jul	\$ 114,335	\$ 52,307	4	0	0	4
Escamilla	1-Jul	\$ 1,250,000	\$ 236,438	10	0	2	10
Fresh West	28-Dec	\$ 123,923	\$ 98,523	5	1	1	6
Growers Co.	1-Jul	\$ 385,574	\$ 116,511	3	0	0	3
GVE	1-May	\$ 128,589	\$ 79,359	0	0	0	0
La Tapatia	31-Mar	\$ 178,529	\$ 109,940	13	4	0	17
Sam McKinsey	1-Jan	\$ 48,802	\$ 43,919	2	0	0	2
Mission Ranches	1-Jan	\$ 190,295	\$ 234,000	11	3	2	14
Natural Selection	1-Jul	\$ 132,754	\$ 89,199	12	1	0	13
Season	28-Jan	\$ 1,250,000	\$ 651,237	18	9	1	27
Sunsweet Dryers	1-Jul	\$ 144,005	\$ 107,427	14	0	0	14
Nature Quality	1-Jan	\$ 111,308	\$ 50,906	8	1	0	9
Cal West Farming	18-Sep	\$ 650,500	\$ 88,260	0	0	0	0
Gudpak	30-Sep	\$ 115,150	\$ 11,515	0	0	0	0
F & F Contracting	1-May	\$ 286,529	\$ 143,268	1	15	0	16
Sayler American	1-May	\$ 445,414	\$ 222,708	1	12	0	13
SK Foods	1-May	\$ 121,403	\$ 60,702	0	8	0	8
Ramco	1-Apr	\$ 193,431	\$ 112,833	0	1	0	1
Rigel	1-Nov	\$ 259,154	\$ 25,915	0	0	0	0
TOTALS		\$ 6,290,762	\$ 2,591,531	102	55	6	157
21 Accts							

October 1997

ACCOUNT	Est.	1998	1997	1997	1996	1995	1994	1994
	98 EAP	Xmod	Xmod	LOSSES	PREM	LOSSES	PREM	LOSSES
Farm	\$ 150,000		1.12			\$ 24,655	\$ 131,994	\$ 134,419
Distributor	\$ 250,000		1.66			\$ 21,747	\$ 241,698	\$ 188,262
Fast Food Chain	\$ 200,000					\$ 46,566	\$ 194,980	
Distributor	\$ 250,000		0.76	\$ 41,852	\$ 195,678	\$ 77,996	\$ 235,055	\$ 185,073
Packing	\$ 350,000		1.23	\$ 24,500	\$ 240,587	\$ 100,153	\$ 432,397	
Meat Packing	\$ 150,000		1.57	\$ 76,103	\$ 378,502		\$ 121,490	
Packing	\$ 150,000		0.94					
Distributor	\$ 195,000							
Processing	\$ 160,000							
Packing	\$ 100,000		0.64					
Farm	\$ 200,000		0.72					
Distributor	\$ 175,000							
Packing	\$ 160,000		1.08					
Harvesting	\$ 250,000		1.3					
Packing	\$ 175,000		0.96					
Labor Contractor	\$ 180,000		1.08					
Processing	\$ 600,000		1.98					
Packing	\$ 140,000		0.88					\$ 92,932
Processing	\$ 1,400,000		0.93					
Packing	\$ 240,000		1					
Processing	\$ 500,000		0.67					
Packing	\$ 205,000		0.71					
Packing	\$ 155,000		0.66					
Farm	\$ 250,000		1.03	\$ 12,318		\$ 81,949		\$ 23,334
Packing	\$ 150,000		0.86	\$ 42,486		\$ 77,348		
Packing	\$ 600,000							
Labor Contractor	\$ 170,240	0.92	1.18	\$ 77,465	\$ 235,536	\$ 63,774	\$ 168,067	\$ 178,211
Winery	\$ 45,263	0.92	1.18	\$ 18,270	\$ 38,000	\$ 20,629	\$ 28,460	\$ 12,475
Harvesting	\$ 295,000			\$ 182,656	\$ 299,284	\$ 405,206	\$ 369,888	\$ 264,045
TOTALS	\$ 7,695,503			\$ 475,650	\$ 1,387,587	\$ 895,368	\$ 1,670,545	\$ 944,332
Loss Ratio								
29 Accounts								
*Coastal Valley & Mesa Vineyard are written seperate, but have common ownership, share mod & are 12/1 effective.								

DWIGHT HALVORSON

INSURANCE INDUSTRY EXPERIENCE

Began insurance career in 1973 selling life and disability products for American Fidelity Assurance Company. Promoted to Sales Manager for pension and group programs and transferred to Sacramento, California in 1975.

Became a producer for Employee Benefits Insurance Company (EBI), a specialty workers' compensation insurer in 1979. Was primarily responsible for selling EBI's workers' compensation products to large commercial accounts. Was consistently one of the company's most successful producers. Gained extensive knowledge about the unique need of accounts within the food industry, including growers, packers, shippers, wholesalers and retailers because EBI insured many businesses within this industry.

Joined Wise Insurance Agents/Brokers in 1981 and from 1981 through 1987 was the largest producer of property-casualty and workers compensation premium for that organization.

Assisted in forming and managing a Bermuda based captive to reinsure workers' compensation risks of agri-businesses in mid-1982. Gained extensive knowledge about structuring reinsurance treaties, insurance company management and administering effective loss control and claims services.

Left Wise Insurance to form Dwight Halvorson Insurance Services in early 1987, specializing in handling the insurance risks of accounts within the food industry. Dwight Halvorson Insurance Services is a full service insurance brokerage offering property and casualty, workers' compensation and employee benefits expertise to its clients.

Its primary focus is on serving the food industry, consequently, most of its clients are comprised of businesses with the "food chain" such as: growers, shippers, packers, wholesale distributors, restaurants and retail grocers. The organization, with Halvorson as its President, has achieved great success, growing to become one of the larger commercial insurance brokerages in the Sacramento Valley.

Created and marketed a special workers' compensation program for convenience stores and is the endorsed workers' compensation insurance broker for the California Grocers Association.

Helped form a specialty brokerage to insure the liability risks of residential real estate brokers and is the Chief Financial Officer of this rapidly growing organization.

Recognizing the conflict of interest inherent in the traditional method of providing workers' compensation products and services, created Food Services Insurance Managers (FSIM) in late December, 1996 to provide an innovative, yet pragmatic alternative to this substantial under-served market. As the Chief Executive Officer of Food Services Insurance Managers, has achieved accelerated growth and fostered enthusiastic support from all who have been exposed to this innovative new program.

EDUCATION

B.A. Degree - St. Thomas College - St. Paul, MI

GEORGE HAGOSIAN

INSURANCE INDUSTRY EXPERIENCE:

Began insurance career as a sales representative for Liberty Mutual Insurance Company in 1977. Gained extensive knowledge about workers' compensation as a result of intensive training provided by the company. Was primarily responsible to sell workers' compensation products to large companies. Was regularly one of the division's highest producing salespersons. Left Liberty in March 1981.

Joined Maryland Casualty from March 1981 to April 1985 to become a marketing representative, negotiating agreements with agents and brokers.

Left to join Argonaut Insurance Company April 1985 as the manager of agency relations. Was a member of Home Office Project Team which developed Argonaut's "Account Management Strategy". Remained with Argonaut until August 1987, after gaining a reputation within the company as a high performer.

Joined Citation Insurance Company in August 1987 as its Marketing Manager. Was responsible for developing sales aids, business plans, sales presentations and staffing. Left the company in January 1992 due to its downsizing resulting from business reverses.

Joined Industrial Indemnity Company's Sacramento Division as its Managing Director of Client Services. In that capacity was responsible for creating and managing Sales/Service, Underwriting, Loss Control, Claims Service Representatives and Clerical Support personnel. Managed business development, service commitments and monitored compliance with underwriting guidelines. Improved closing ratio to 93% and increased average account size from under \$30,000 to over \$285,000, before leaving in March, 1994.

Joined Fireman's Fund Insurance Company in March, 1994 as Business Development Manager in their Rancho Cordova division office. Was responsible for production, profits, development of marketing/sales materials, territorial market segmentation strategies and underwriting compliance.

Assisted staff in transitioning to "open rating" environment. Collaborated with Regional Vice President on developing successful underwriting and marketing strategies. During tenure at Fireman's Fund, exceeded both new business production and account retention goals, while substantially improving the quality of the business being insured. During last year with the company, accounts earned a pure loss ratio under 30%.

Left Fireman's Fund to join Food Services Insurance Managers as its Vice President - Underwriting in February 1997.

EDUCATION:

B.A. - University of San Francisco (Cum Laude - Dean's List)

Foundation Courses, MBA Program - University of San Francisco

Contract Law, Torts, Criminal Law Personal Property Law - Lincoln Law University

Successfully Completed:

Claim Management Workshop - Industrial Indemnity Company

Product Knowledge Training Course - Liberty Mutual

Professional Selling Skills - Liberty Mutual

ED W. WILSON

INSURANCE INDUSTRY EXPERIENCE

Was Commercial Accounts Underwriting Manager for State Farm Insurance, Westlake Village, California from 1973-1979. Was responsible for growth and profits for commercial lines of insurance—with particular emphasis on farm and ranch program.

Joined Maryland Casualty Insurance Company in 1979 and for two years acted as Commercial Casualty Underwriting Manager for their Los Angeles office. Responsibilities included managing the activities of commercial lines underwriters for all lines of insurance, including workers' compensation, for both California and Arizona. Met company's growth and profit objectives.

Left to join Mission American Insurance Company as an Assistant Branch Manager in their Ventura, California office. Was promoted to Assistant Branch Manager of Mission's Los Angeles branch. Was responsible for achieving production and profit objectives for the branch which was producing approximately \$100 million of annual premium.

1983, was promoted to Vice President and Branch Manager of San Jose branch. While in that position, opened its Fresno office and increased production to over \$60 million from these two offices. Was responsible for all operations of these two branches.

Due to success in San Jose, was made the Regional Vice President for the Pacific Northwest in 1984, with responsibilities for three branch offices—Portland, Oregon, Boise, Idaho and Seattle, Washington. Met company's production and profitability objectives during his two year stint.

Joined Superior National Insurance Company in 1986 as Vice President. Was responsible for developing Northern California territory. Was successful in transforming \$6 million of unprofitable premium into a \$60 million book of profitable accounts over a seven year period. While an employee of Superior National, was promoted to Senior Vice President in 1986, Executive Vice President in 1990 and made director of all company field operations in 1993.

Joined RTW Insurance Company in 1995—currently acts as General Manager, Director of Midwest Operations, responsible for opening offices in various states targeted for entry by the company. Position requires establishing and staffing offices and managing operations, until systems and procedures are firmly in place and operating.

EDUCATION

B.A. Degree - Bethany College, Lindsberg, KS

Has successfully completed 7 parts of CPCU

Has attained CLU designation

J. DANIEL HENKE

INSURANCE INDUSTRY EXPERIENCE

Began insurance adjusting career with Liberty Mutual Insurance Company in 1971, specializing in handling claims for large accounts, including TWA, United Parcel Service and American President Lines. Participated in Liberty's on-the-job training programs and successfully completed extensive claim adjusting courses.

Joined Employee Benefits Insurance Company, a workers' compensation specialty insurer, in 1976. Charged with responsibility of opening its Sacramento branch's claims department. Was the Claim Manager for that office—overseeing the activities of over 60 claim adjusters and supportive personnel.

Promoted to Vice President of Sacramento Division of EBI Services, Inc., a wholly owned subsidiary which specialized in administering self-funded workers' compensation programs.

Joined Homeland Insurance Corporation and establish their Sacramento regional claims office in January 1985. Was responsible for hiring, training and managing the 15 person staff for that office.

Left Homeland Insurance to found Risk Management Service, Inc. in early 1987 and is the President of that organization. RMSI specializes in handling the claim management functions for special insurance programs on behalf of insurance carriers and managing general agents and self funded programs for municipalities and other large corporations, on a contract basis. In that capacity, RMSI performs all of the functions usual to a claim department, including but not limited to: claim investigation and settlement, filing Unit Statistical reports, special statistical reports and training Insureds.

EDUCATION

B.A. Degree - California State University, Riverside Campus, Riverside, CA

Hold Workers' Compensation Claims Law Associate designation

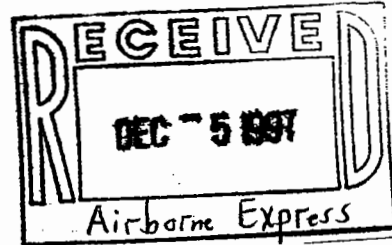
Successfully passed Self Administrators Examination

Past President - Claims Executive's Council



Dwight Halvorson
INSURANCE SERVICES

December 3, 1997



Janet L. Backer
Frontier Insurance Company
195 Lake Louise Marie Road
Rock Hill, NY 12775

RE: AGENCY APPOINTMENT DOCUMENTS

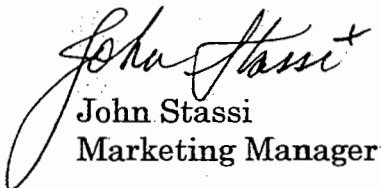
Dear Janet:

Per your request, I am returning to you the completed Agency Appointment Questionnaire which was signed by Dwight Halvorson. Also included are the copies of the dec page of our E & O policy, Bond dec page, licenses for California and Arizona (other states available if needed), resumes of key personnel, and financial statement.

Should you need any additional information, please give myself or George Hagosian a call.

Thank you for your consideration.

Sincerely,


John Stassi
Marketing Manager

FRONTIER INSURANCE COMPANY

LIMITED AGENCY AGREEMENT

This Limited Agency Agreement ("**Agreement**") is entered into by and between **FRONTIER INSURANCE COMPANY**, an insurance company domiciled in New York ("**Company**") (and/or their subsidiary companies as required), and **Dwight Halvorson Insurance Services**, a California Corporation ("**Agent**").

COMPANY AND AGENT HEREBY AGREE AS FOLLOWS:

ARTICLE 1 - APPOINTMENT

- 1.1 **Company** hereby appoints **Agent** to act on behalf of **Company** with the authority and subject to the terms and conditions hereinafter set forth, and **Agent** hereby accepts such appointment.
- 1.2 **Company's** appointment of **Agent** hereby shall not restrict in any manner **Company's** right to appoint other producers and agents.

ARTICLE 2 - DEFINITIONS

- 2.1 "**Sub-producer**" shall mean any insurance broker, insurance agent or other person or entity properly licensed to produce insurance and through which Policies may be produced to **Agent**.
- × 2.2 "**Effective Date**" shall mean 12:01 a.m., January 1, 1998.
- 2.3 "**Policy**" shall mean any Policy, contract, coverage slip, endorsement, binder, certificate, proposal for insurance or other document which binds **Company** to insurance or coverage issued or renewed by **Company** on or after the Effective Date through **Agent** and shall also include any rewrite, renewal or extension (whether before or after termination of this Agreement) through **Agent** required by law.

ARTICLE 3 - AUTHORITY OF AGENT

- 3.1 **Agent** is hereby authorized and assumes the duty to act on behalf of **Company** as a casualty broker-Agent. All actions and inactions of **Agent** under this authorization

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shall be subject to the ultimate authority of **Company**, and **Company** from time to time shall be entitled to place reasonable restrictions on **Agent's** authority; provided such restrictions are in writing.

- 3.2 **Agent** is hereby authorized, subject to the terms of Article 11, requiring prior written permission and applicable law, to advertise and solicit with respect to **Company** and the business to be produced through the **Agent** hereunder.
- 3.3 **Agent** is hereby authorized, subject to underwriting guidelines established and rates set by **Company** from time to time and applicable law to accept applications, to quote, bind and decline coverages and to conduct audits ("Underwrite") on behalf of **Company** for all classes or lines of insurance set forth in Addendum No. 1, Schedule of Business prepared by **Company** and attached hereto ("Schedule of Business"); provided **Agent** shall use applications and quote, bind and decline forms approved by **Company** or where unregulated business, the generally accepted market forms, and provided additionally that except where specifically agreed in writing **Agent** shall have no authority to bind reinsurance or retrocessions on behalf of **Company**. The Schedule of Business shall provide the authority of **Agent** with regard to, but not limited to, underwriting guidelines, the types of risks which may be written, maximum limits of liability, territorial limitations, maximum Policy periods and projected annual premium volume. The Schedule of Business may be amended from time to time as deemed appropriate by **Company**, provided such amendments are in writing.
- 3.4 **Agent** is hereby authorized, as a trustee for **Company**, and subject to applicable law, to print, maintain, execute and issue Policies and to assemble, countersign and issue Policies.
- 3.5 **Agent** is hereby authorized, subject to applicable law, Policy provisions and **Company's** ultimate authority, to cancel and renew Policies underwritten or delivered by **Agent** hereunder.
- 3.6 **Agent** shall be responsible to the Insured while this Agreement continues in effect for the renewal or non-renewal of any Policy underwritten or delivered by **Agent** hereunder and shall in a timely manner and pursuant to applicable statutes and regulations communicate any renewal quote or notice of non-renewal to the insured to preclude the extension of coverage beyond the expiration date of the Policy.
- 3.7 **Agent** is hereby authorized, as a trustee for **Company**, and subject to the applicable provisions of this Agreement, to receive and receipt for premiums and fees, to pay return premiums, to pay adjustments and to retain and pay commissions out of such collected premiums, subject to the provisions of this Agreement and applicable statutes and regulations.

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- OK
- 3.8 With the exception of Food Services Insurance Managers, Inc., **Agent** shall not authorize any sub-producer or other person or entity to quote, bind, or decline coverages or otherwise underwrite on behalf of **Company** without the prior written consent of the **Company**.
- 3.9 The original sources of some or all business under this Agreement shall be sub-producers. **Agent** is hereby authorized to enter into agreements with such sub-producers with respect to the business hereunder; provided **Agent** shall have no authority to obligate **Company** in any manner to such sub-producers and all agreements with such sub-producers shall provide that the sub-producers shall have no claims or causes of action against **Company** except for reckless conduct or willful misconduct of **Company**. Additionally, **Agent** shall be responsible for verifying the proper licensing of such sub-producers, and if any liabilities are incurred by **Company** as the result of **Agent's** accepting business from unlicensed or improperly licensed sub-producers, **Agent** shall indemnify and hold **Company** harmless from, and reimburse **Company** for, any and all such liabilities, including but not limited to fines, court costs and expenses, legal fees and travel expenses.
- 3.10 **Agent** may accept as a trustee for **Company** premium financed by premium finance companies, upon terms and conditions approved in writing by **Company**.
- 3.11 **Agent** shall not process, adjust, settle or pay any claims under Policies underwritten or delivered by **Agent** pursuant to this Agreement, nor shall **Agent** commit **Company** to pay any claim. Should **Agent** become aware, or have delivered to it any notice of claim or claims, **Agent** immediately shall forward such notice of claim or claims to **Company** or its designee in a manner designated by **Company**.

ARTICLE 4 - COMPENSATION

- 4.1 Except as otherwise specified on the Schedule of Business, **Company** shall allow **Agent** a gross commission of twelve (12%) of all gross written premium collected, for Policies underwritten or delivered by **Agent** hereunder. This commission arrangement shall be reviewed from time to time and shall be subject to adjustment at the discretion of the **Company** on a prospective basis and upon at least sixty (60) days prior written notice to the **Agent**.
- 4.2 The **Agent** is responsible for all commissions due to sub-producers and others with respect to Policies written or delivered hereunder. The **Company** shall not be responsible to pay sub-producers.
- 4.3 **Agent** shall charge and collect for all Policy and other fees required with respect

to business produced hereunder to the extent such charges are permitted by law.

ARTICLE 5 - ACCOUNTING, RECORDS AND EDP

- 5.1 **Agent** shall provide and maintain in forms reasonably acceptable to **Company** complete and accurate books, records, dailies and correspondence necessary to determine the amount of liability of **Company** and the amount of premium and expense derived from business written hereunder.
- 5.2 The omission of any item from any statement, or report applicable to the business hereunder shall not affect the responsibility of either party to account for and pay all amounts due the other party hereunder, nor shall it prejudice the rights of either party to collect all such amounts due from the other party.
- 5.3 **Agent** shall prepare separate, itemized, invoices and/or monthly statements for each sub-producer for the business produced by the sub-producer hereunder, and furnish the sub-producers IRS Forms 1099 each year if and when required.
- 5.4 All of **Agent's** records applicable to the business hereunder shall be kept in such manner and form as are generally recognized as acceptable in the insurance industry or as reasonably may be required by **Company**. Such records shall be maintained for five (5) years or for any longer retention period required by law or **Company**.
- 5.5 All records in **Agent's** possession or control and applicable to the business hereunder shall be made available for inspection, copying and/or audit at reasonable times by **Company** or its **Agents**, or any governmental authority with the right to inspect.
- 5.6 All records in **Agent's** possession or control and applicable to the business hereunder shall be made available, upon prior written request and at the **Company's** cost, for inspection at any office of **Company**, should such inspection be requested by insurance department or other governmental authorities.
- 5.7 **Agent** shall immediately forward upon request to **Company** or **Company's Agent's** exact, as written, copies of all applications, Policies and reports underwritten or delivered by **Agent** or used by **Agent** hereunder, including all other evidence of insurance written, modified or terminated.
- 5.8 **Agent** shall be solely responsible for and shall keep accurate records of all Policy supplies assigned to **Agent** and shall account to **Company**, upon **Company's** request, for all outstanding and unused Policy supplies. If canceled or terminated Policy supplies are unavailable, **Agent** shall forward or cause to be forwarded to

Company properly executed lost Policy receipts therefor. Upon termination of this Agreement, **Agent** shall promptly dispose of all Policy supplies and other property of the **Company** as directed by the **Company**.

- 5.9 **Company** shall be entitled to conduct examinations of **Agent's** operations at any reasonable time. Such examinations shall be conducted in reasonable manners and may cover such matters as required or permitted by law and as are relevant to the business done hereunder.
- 5.10 **Agent** shall furnish **Company**, with any additional information and reports as reasonably requested by **Company** and necessary to complete **Company's** quarterly and annual statements filed with regulatory authorities or otherwise satisfy regulatory requirements.
- 5.11 **Agent** shall annually furnish **Company**, within ninety (90) days following the end of the **Agent's** fiscal year, current (audited, if available) financial statements of **Agent**. These financial statements shall include, but not be limited to, profit and loss, balance sheet and cash flow statements.

ARTICLE 6 - ACCOUNT CURRENT

- 6.1 The **Agent** shall, not later than fifteen (15) days after the end of each month, prepare and forward to the **Company** a detailed and itemized statement of account of all premiums written and premium adjustments made (whether additional or return) within the month for which the statement (herein referred to as the "Account Current") is rendered. However, the **Company** shall have the privilege, exercisable at its option, of preparing the Account Current.
- 6.2. The **Agent** shall pay the balance, if any, due the **Company** as shown on each Account Current within forty-five (45) days following the end of the month for which the Account Current was rendered. Upon rendition by the **Company** of invoices or statements adjusting or correcting any Account Current, the **Agent** shall pay to the **Company** forthwith the balance, if any, shown to be due thereon. **Agent** shall be responsible to pay written premium to the **Company**, whether or not premium has been paid by any insured or sub-producer, it being understood that **Agent** assumes the credit risk should it bind insurance without receiving premium.
- 6.3 The Account Current between the parties prepared and forwarded by the **Company** in accordance with the above, or invoices, statements or adjustments on any Account Current transmitted to the **Agent** by the **Company** shall be binding and conclusive on the **Agent** unless the **Agent**, within ten (10) days from receipt of such Account Current, invoice, statement or adjustment shall send to the **Company** a

written itemization of objections thereto.

- 6.4 The provisions of this Article, which are binding upon the parties subsequent to the termination of this Agreement, shall survive such termination until all obligations are finally discharged.

ARTICLE 7 - EXPENSES

- 7.1 **Agent** shall be responsible for and promptly pay all expenses attributable to producing and servicing business under this Agreement, except as specified in Section 7.2. This responsibility shall not be altered whether the expenses are billed to **Agent** or **Company**. These expenses shall include, but not be limited to:
- (a) Salaries, related taxes and benefits of all employees of **Agent**;
 - (b) Transportation, lodging and meals of employees of **Agent**;
 - (c) Postage and other delivery charges;
 - (d) Advertising unless specifically agreed otherwise by **Company** in writing;
 - (e) EDP hardware, software and programming;
 - (f) Countersignature fees or commissions;
 - (g) License and appointment fees for **Agent's**, brokers, sub-producers and others;
 - (h) Income and state and local sales taxes, if any, directly applicable to **Agent's** business;
 - (i) Taxes on surplus lines premium, and Policy fees if necessary in respect of Policies underwritten or delivered by **Agent** hereunder;
 - (j) Costs of office space, facilities, equipment and occupancy used by **Agent**;
 - (k) Legal and auditing expenses incurred by **Agent** in the normal conduct of its business; and
 - (l) Such other expenses as are customarily borne by insurance producers.

- (m) Any and all charges made by NCCI or applicable state governing body against premium volume written under this program. It being understood that **Company** is an NCCI member company and that NCCI or state governing body charges are applicable on both a fee for service basis and a percentage charge applicable against total premium volume written under this program;
 - (n) Printing of preposals, booklets, certificates, solicitation brochures, premium notices, records and reports, and all documents and other materials required to fulfill the obligation of Manager under this agreement;
- 7.2 **Company** shall be responsible for and promptly pay all expenses incurred by **Company** under this Agreement. This responsibility shall not be altered whether the expenses are billed to **Company** or **Agent**. These expenses shall include but not be limited to:
- (a) Salaries, related taxes and benefits of all employees of **Company**;
 - (b) Transportation, lodging and meals of employees of **Company**;
 - (c) Board and bureau fees;
 - (d) Income and state and local sales taxes, if any, directly applicable to **Company's** business;
 - (e) State or guaranty fund assessments;
 - (f) Losses and loss adjustment expenses incurred by or at the direction of **Company**;
 - (g) Reinsurance costs;
 - (h) Legal and auditing expenses incurred by, on behalf of or at the direction of the **Company**; and
 - (i) Such other expenses as are customarily borne by insurance companies.

ARTICLE 8 - HANDLING OF FUNDS

- 8.1 **Agent** shall accept and maintain at all times all premium collected and other funds relating to the business underwritten by **Agent** under this Agreement in the capacity of a fiduciary and trustee for **Company**. The privilege of retaining commissions shall not be construed as changing the fiduciary capacity.
- 8.2 **Agent** shall establish and maintain a premium trust account designated Food

Services Insurance Managers, Inc., Premium Trust Account - Frontier in a bank mutually agreed by **Agent** and **Company** and shall deposit into such premium trust account all premiums collected by **Agent** hereunder. **Agent** shall have the right to transfer funds held in such premium trust account to successor banks with the prior written consent of **Company**. All such banks shall be members of the Federal Reserve System whose deposits are insured by the Federal Deposit Insurance Corporation. **Agent** shall be entitled to retain any interest earned on funds deposited in such premium trust accounts until premium is to be remitted to **Company** pursuant to Article 6 hereof.

- 8.3 **Agent** shall maintain sole signature authority on such premium trust account and may use any and all premium and other funds collected by **Agent** under this Agreement only for the following purposes:
- (a) Payments of amounts due **Company** pursuant to this Agreement;
 - (b) Return of unearned premiums arising due to cancellation or endorsement of Policies underwritten or delivered by **Agent**;
 - (c) Payment of **Agent's**, sub-producers' and others' compensations as described in Article 4;
 - (d) Return of money deposited in error; and
 - (e) Withdrawal of interest due **Agent** hereunder.
- 8.4 **Agent** shall not commingle any funds in such premium trust account with funds in **Agent's** corporate accounts or other funds held by **Agent** in any other capacity.
- 8.5 **Agent** shall render accounts to **Company** detailing all premium trust account transactions, and remit to **Company** all funds due under this Agreement pursuant to said account by the end of the month following the month during which the **Agent** collected such funds for the account of the **Company**.
- 8.6 In the absence of negligence or fraud by either party hereto, neither party shall be liable for any loss which occurs by reason of the default or failure of the bank in which an account is carried.
- 8.7 **Agent** shall promptly account for and refund commissions on Policy cancellations, reductions in premiums or any other return premiums at the same rate at which such commissions were originally retained.
- 8.8 Neither **Company** nor **Agent** shall offset any balances due under this Agreement

with any amounts due under any other agreement between **Company** and/or its affiliates and **Agent** and/or its affiliates.

ARTICLE 9 - OWNERSHIP OF BOOKS AND RECORDS

- 9.1 Subject to Article 5 hereof, upon termination of this Agreement, **Agent's** records and the exclusive use and control of expirations of business produced by sub-producers retained by **Agent** and contracts with such sub-producers shall remain the sole property of **Agent** and be left in **Agent's** undisputed possession, provided **Agent** is not then in default of any payment obligated to **Company** hereunder. If **Agent** is then in default of any such payment obligated and has not cured such default within fifteen (15) days of **Company's** notice to **Agent** thereof, ownership of the records, use and control of expirations and contracts with sub-producers shall become and remain vested in **Company**. **Company** may then dispose of such expirations as it deems proper.
- 9.2 **Agent** hereby assigns to **Company** as security for the payment obligations of **Agent** under this Agreement all sums due or to become due to **Agent** from any insureds whose Policies were underwritten or delivered by **Agent** hereunder. **Company** shall have full authority to demand and collect such sums if **Agent** is then in default of any payment obligation to **Company** hereunder and has not cured such default within fifteen (15) days of **Company's** notice to **Agent** thereof.
- 9.3 **Agent** pledges and grants to **Company** to further secure the payment obligations of **Agent** hereunder all of **Agent's** records of expirations of Policies, including, but not limited to, the ownership and use of such expirations. **Company** shall have the rights of the holder of a security interest granted by law, including, but not limited to, the rights of foreclosure to effectuate such security interest, and **Agent** hereby agrees peaceably to surrender possession of such records to the **Company** upon demand.
- 9.4 **Agent** agrees that this Agreement or a copy hereof may be filed as a financing statement, if **Company** so elects. **Agent** further agrees to sign a UCC-1 Form to secure **Company's** security interest in the expirations and renewals upon request by **Company**; provided that upon termination of this Agreement and **Agent** not being in default of any payment obligation to **Company** hereunder, **Company** immediately shall cancel or terminate such filing.

ARTICLE 10 - INDEPENDENT CONTRACTOR RELATIONSHIP

- 10.1 Nothing contained in this Agreement shall be construed to create the relationship of employer and employee between **Company** and **Agent**, or between **Company**

and any employees, representatives or sub-producers of **Agent**. **Agent** shall carry out its responsibilities hereunder subject to its own discretion and not subject to time or manner directions of **Company**.

ARTICLE 11 - ADVERTISING

- 11.1 Before **Agent** uses **Company** name in any form of advertising, a copy of the proposed advertisement shall be forwarded to **Company**. No such advertisement shall be used without the prior written permission of **Company**. All agreements with sub-producers shall require that before they use **Company's** name in any advertising, a copy of the proposed advertisements shall be forwarded to **Company**, and that no such advertisements shall be used without the prior permission of **Company**.
- 11.2 If an advertisement containing **Company's** name is used by **Agent** or sub-producers retained by **Agent**, **Agent** shall maintain a copy of the advertisement and full details concerning where, when and how it was used, and comply with all legal requirements regarding content, review and approval of advertising and maintenance of records. **Agent**, however, shall not be required to maintain records of the names and addresses of recipients of any direct mailing or advertising but shall only record the geographical area in which such mailing or advertising was used except to the extent retention of such information is required by law.

ARTICLE 12 - LICENSING

- 12.1 **Agent** warrants that it has and shall maintain current licenses and authorities as required by law for the conduct of its business pursuant to this Agreement.
- 12.2 **Agent** shall be responsible for verifying that all sub-producers to **Agent** shall maintain appropriate licenses and authorities as required by law for conduct of their businesses.
- 12.3 **Agent** shall maintain in force written agreements, in form reasonably satisfactory to **Company**, with sub-producers to **Agent** hereunder.

ARTICLE 13 - AGENT'S SALE OR TRANSFER

- 13.1 In the event any interest in **Agent** is to be sold or transferred or is to merge to be consolidated with another firm not under common control, controlling or controlled by **Agent** or **Company**, **Agent** shall give thirty (30) days advance written notice to **Company**, to allow **Company**, at its election:

- (a) To consent to assignment of this Agreement to the successor;
- (b) To enter into a new Agreement with the successor; or
- (c) To terminate this Agreement.

13.2 **Company** shall notify **Agent** of its decision within fifteen (15) days of the receipt of the notice.

13.3 **Agent** shall notify **Company** in writing within fifteen (15) days if there is a change in:

- (a) Ownership of ten-percent (10%) or more of the outstanding voting stock of **Agent**; or
- (b) The President of **Agent**,

ARTICLE 14 - INDEMNITY AGREEMENT

14.1 **Agent** shall indemnify and hold **Company** (including its officers and employees) harmless from any and all claims, causes of action, damages, judgments, fines, penalties and expenses (including, but not limited to, attorney's fees, litigation expenses and costs of court) which may be made against the **Company** by anyone, including any governmental agency or regulatory authority, and which arise, either directly or indirectly, principally out of any negligent or grossly negligent actions or inactions or willful misconduct or violation of any statute or regulation by **Agent**, including, but not limited to, any negligent or grossly negligent actions or inactions or willful misconduct or violation of any statute or regulation by any sub-producer to **Agent** or any of **Agent's** or such sub-producers' employees or representatives arising under this Agreement.

14.2 **Company** shall indemnify and hold **Agent** (including its officers and employees) harmless from any and all claims, causes of actions, damages, judgments, fines, penalties and expenses (including, but not limited to, attorney's fees, litigation expenses and costs of court) which may be made against the **Agent** and which arise either directly or indirectly, principally out of any negligent or grossly negligent actions or inactions or willful misconduct or violation of any statute or regulation by **Company**, including, but not limited to, any negligent or grossly negligent actions or inactions or willful misconduct or violation of any statute or regulation by **Company's** employees or representatives arising under this Agreement.

14.3 If any person seeks indemnity hereunder the person to be indemnified ("Indemnified Person") shall give the indemnifying party ("Indemnifying Party")

prompt written notice of the claim, cause of action, damage, judgment, fine, penalty and expense against which indemnification is sought, including copies of all documents and information reasonably relating thereto. The Indemnifying Party promptly shall commence defending the Indemnified Person through competent attorneys reasonably satisfactory to the Indemnified Person. The Indemnified Person shall cooperate with the Indemnified Party in such defense, but the ultimate decision whether to defend or settle shall be made by the Indemnified Person.

- 14.4 If either party shall institute any lawsuit to enforce the obligations assumed by the other party under this Agreement, the prevailing party shall be entitled to recover from the other party all costs, expenses, judgments and attorney's fees incurred by the prevailing party in connection with the lawsuit.
- 14.5 **Agent** warrants that it has and shall maintain Errors & Omissions insurance with an insurer reasonably acceptable to **Company** and providing coverage of the greater of (i) the minimum required by law or (ii) \$1,000,000.

ARTICLE 15 - MEDIATION AND VENUE

- 15.1 If irreconcilable differences arise as to business done under this Agreement, either party may request, in writing, mediation of such difference. Such mediation shall be conducted pursuant to Commercial Mediation Rules of the American Arbitration Association. Such mediation shall be conducted in **New York** and concluded within thirty (30) days after notice of mediation. The costs of the parties incurred in the mediation shall be allocated by the mediator pursuant to the equities of the parties with respect to the matter mediated. Any such mediation shall be non-binding and without prejudice.
- 15.2 If any dispute cannot be resolved by mediation, the parties agree that the courts of **New York** shall have exclusive jurisdiction to resolve any such dispute and that the internal law of the state of **Company's** domicile will apply to the interpretation and enforcement of the dispute.

ARTICLE 16 - TERMINATION

- 16.1 This Agreement shall be terminable by (i) either party upon fifteen (15) days prior written notice to the other party for "cause" (defined, as hereinafter used, as the other party's permanent legal or physical inability to perform its obligations hereunder, the other party's conviction of a felony, or the other party's "Material Breach" of this Agreement and failure to cure such Material Breach within the applicable cure period); (ii) the **Company** in the event the **Company** determines that the **Agent** has exceeded the authority granted the **Agent** by the **Company**

under Article 3 - Authority of Agent or (iii) upon ninety (90) days prior written notice to the other party as of the end of any calendar quarter. A "Material Breach" shall consist of (a) failure by a party to pay any amount due hereunder when due, which is not paid within fifteen (15) days following the other party's written demand for such payment, or (b) the failure to obtain or maintain, or the termination or suspension of, a license, permit or other authority necessary for a party to conduct its business as contemplated hereunder which is not cured within thirty (30) days.

- 16.2 Upon termination, **Agent** promptly shall deliver or cause to be delivered to **Company**, at **Company's** expense, all property of **Company** in **Agent's** control or possession, including but not limited to, EDP equipment owned by **Company**, Policies, manuals, forms, unused drafts and all materials used in servicing of Policies, including computerized and data processing records and the physical equipment required for the processing of those records and data. If **Agent** fails to deliver such property within fifteen (15) days after the termination of this Agreement, **Agent** shall bear all reasonable expenses which **Company** may expend or cause to be expended in obtaining such items. If Policy supplies cannot be accounted for by **Agent** or have been destroyed, lost or mislaid, **Agent** agrees to protect, defend and hold **Company** harmless from all persons and claims whatsoever arising with respect to such Policy supplies.
- 16.3 **Company** may, for "cause," in its sole discretion, suspend any and all of **Agent's** authority pursuant to this Agreement. Such suspension shall be effective upon written notification to **Agent** setting forth the nature of the "cause" in reasonable detail.
- 16.4 In the event of termination of this Agreement by **Company** for "cause" any indebtedness of **Agent** to **Company** and all premiums in the possession of **Agent**, or for the collection of which **Agent** is responsible, shall become immediately due to **Company**.
- 16.5 The failure of either party to declare promptly a default or breach of any of the terms and conditions of this Agreement shall not be construed as a waiver of any of such terms and conditions, nor stop either party from thereafter demanding full and complete compliance herewith.
- 16.6 In the event of termination of the Reinsurance Agreement between Platinum Indemnity Limited and **Company**, **Company** reserves the right to terminate this Agreement effective immediately upon written notice to the **Agent**.
- 16.7 Notwithstanding the termination of this Agreement, the provisions of this Agreement shall continue to apply to all unfinished business to the end that all obligations and liabilities incurred by each party as a result of this Agreement shall be fully

performed and discharged according to its terms.

ARTICLE 17 - MISCELLANEOUS

- 17.1 This Agreement supersedes all previous agreements, if any, whether written or oral, between **Company** and **Agent** relating specifically to the subject matter hereof.
- 17.2 Wherever from the context it appears appropriate, each term stated in either the singular or plural shall include the singular and plural and any term stated in either the masculine, or feminine or the neuter gender, shall include the masculine, the feminine and the neuter gender. All captions and section headings are intended to be for purposes of reference only and do not affect the substance of the section to which they refer.
- 17.3 Each party hereto agrees to perform any further acts and execute and deliver any further documents which may be reasonably necessary to carry out the provisions of this Agreement.
- 17.4 In the event that any of the provisions, or portions thereof, of this Agreement are held to be illegal, invalid or unenforceable by any court of competent jurisdiction, the validity and enforceability of the remaining provisions, or portions thereof, shall not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom.
- 17.5 Any and all notices required or permitted to be given under this Agreement shall be in writing and shall be deemed given when deposited in the United States Postal Service, Certified Mail, Return Receipt Requested or faxed with confirmation by telephone to a Vice President or senior officer of the recipient, to the parties' addresses as provided below or such other addresses provided by the parties by like means:

COMPANY:

Frontier Insurance Company
195 Lake Louise Marie Road
Rock Hill, New York 12775

Attn: Kevin F. Jeffery
Senior Vice President

12/29/97

14

FIC/FSIM 000084

AGENT:

Dwight Halvorson Insurance Services
3300 Douglas Blvd.
Suite # 295
Roseville, CA 95661-3807

Attn: Dwight Halvorson
President

17.6 This Agreement may be executed in multiple counterparts, each of which and together shall constitute an original document.

COMPANY:

FRONTIER INSURANCE COMPANY

By: Rue Puleo

Date: January 14, 1998

AGENT:

DWIGHT HALVORSON INSURANCE
SERVICES

By: Dwight Halvorson

Date: 12/7/98

12/29/97

15

FIC/FSIM 000085

Addendum No. 1

"Schedule of Business"

(A) Lines of Coverage:

(1) Workers Compensation

(B) Territory:

California, Arizona

(C) Maximum Policy Period(s):

Twelve (12) months plus odd time not to exceed eighteen (18) months.

(D) Class of Business:

Agricultural operations with governing class codes of 0172-Truck Farms, 0171- Crops, 0040-Vineyards and 8209-Fresh fruit/vegetable packing and handling including storage.

(E) Maximum Limits of Binding Authority:

Dwight Halvorson Insurance Services is authorized to bind agricultural operations for the following limits:

(1) Coverage A: Statutory

(2) Coverage B: \$1,000,000.

(F) Projected Annual Premium Volume:

\$10,500,000. the first calendar year.

ADDENDUM #2

FRONTIER INSURANCE COMPANY
FOOD SERVICES INSURANCE MANAGERS, INC. PROGRAM

It is hereby agreed that this Addendum modifies the Limited Agency Agreement executed between Frontier Insurance Company and Dwight Halvorson Insurance Services. This Addendum supersedes the original Addendum #2 executed by Dwight J. Halvorson.

I. UNDERWRITING GUIDELINES

Insureds may be added to this program on an automatic basis provided the following criteria are met:

1. The prospective insured's net premium is \$50,000. or greater;
2. Experience modification factors shall be obtained prior to quoting any new or renewal risk. Experience modification factors shall be obtained from the Workers Compensation Insurance Rating Bureau of CA, NCCI, or governing state as applicable. Experience modification must be 1.25 or lower based on three (3) years or more of loss experience;
3. No prospect without prior Workers' Compensation coverage will be considered for admission to the program. The prospective insured must have been in business a minimum of three (3) years and provided a full three (3) years plus current year of currently valued (within 120 days prior to expiration date) loss experience including large losses in excess of \$25,000. Such loss runs shall be obtained prior to quoting any new or renewal risk;
4. The prospective insured's classification codes do not deviate from those listed in the Class/Rate Schedule in Section III. of this Addendum.;
5. No single claim, any one occurrence, has exceeded \$125,000. Prior carrier loss runs confirming this shall be obtained prior to quoting any new or renewal risk;
6. The prospective insured's most recent three (3) year cumulative loss ratio does not exceed 50%. Prior carrier loss runs confirming this shall be obtained prior to quoting any new or renewal risk;
7. NCCI underwriting criteria must be complied with, including scheduled credits and rate deviations.

5/19/98 - food4.wpd

8. Rating shall be performed using Frontier's currently filed rates, premium discount and schedule debits/credits.
9. A maximum thirty percent (30%) schedule credit may be applied to risks in the State of CA with standard premium ranging from ~~\$50,000~~ to ~~\$149,999~~.
2000 100,000
A maximum forty -five percent (45%) schedule credit may be applied to risks in the State of CA with standard premium ranging from \$150,000. to \$599,999.
A maximum forty percent (40%) schedule credit may be applied to risks in the State of CA with standard premium of \$650,000. or more.
10. A maximum twenty -five percent (25%) schedule credit may be applied to risks in the State of AZ.

Any risk not falling within the above guidelines must be submitted to Frontier for special consideration and no such risk may be bound without prior written approval by an underwriter employed by Frontier. Frontier shall have no obligation to accept any risk submitted for special consideration by Agent. In addition, the following risks must be submitted to Frontier, prior to binding:

1. All risks providing bus transportation to their employees; and
2. All risks having aircraft exposures.

The following operations are prohibited:

1. Aircraft and airline operations;
2. Navigation and operation of all vessels;
3. Construction and/or maintenance of cofferdams;
4. Operation of drydocks;
5. Subaqueous work;
6. Subway construction;
7. Tunneling operations;

8. Wrecking or demolition of bridges, structures or vessels;
9. All coal mining operations;
10. All underground mining operations;
11. Onshore and offshore gas and oil drilling operations;
12. Manufacture, production or refining of natural or artificial fuel, gas, butane, propane or liquefied petroleum gases or gasoline;
13. Manufacture of fireworks, fuses, nitroglycerine, celluloid and pyroxylin;
14. Manufacture of any explosive substance intended for use as an explosive; and
15. Loading, handling, transportation or storage of explosives.

II. SUBMISSION REQUIREMENTS

The following are to be submitted to Frontier for each insured included in this program:

1. Fully completed Application;
2. Three (3) years plus current year premium and payroll history;
3. Currently valued (within 120 days) loss experience for past three (3) years plus current year;
4. Large losses excess of \$25,000. for past three (3) years plus current year; and
5. Most recent experience modification.

III. CLASS/RATE SCHEDULE

Approved Classification Codes: California

Effective: January 1998

<u>Code</u>	<u>Description</u>	<u>Rates</u>
		Rate X 1.134 (LCM)
7421	Aircraft Operations, Transport. of Personnel	2.48
2003	Bakeries & Cracker Mfg.	6.26
7392	Beer or Ale Dealers	10.61
2163	Bottling-Beverages-No spirituous liquors	5.72
2121	Breweries /,Malt Houses-Incl Bottling/Canning	4.85
0079	Bush Berry Crops	6.26
2113	Canneries-Fish	8.28
2111	Canneries,NOC-Incl Fruit Preserving	8.23
8810	Clerical Office Employees, NOC	0.71
6504	Confections&Food Sundries,Mfg.or ProcNOC	6.96
0044	Cotton Farms	7.41
0401	Cotton Gin Operation	10.39
0400	Cotton Merchants	9.67
4683	Cottonseed Oil Mfg. & Refining	3.44
2063	Creameries& Dairy Products Mfg.	5.86
0036	Dairy Farms	8.30
2142	Distilling, NOC	6.13
2014	Feed Mfg.Prep & Compounding Feeds for Livestock & Poultry	8.75
0038	Feed Yards	16.35
0171	Field Crops	12.21

5/19/98 - food4.wpd

<u>Code</u>	<u>Description</u>	<u>Rates</u>
2108	Fruit-Citrus Fruit packing & handling; Including Storage	8.12
2109	Fruit-Dried Fruit packing & handling	7.19
2107	Fruit- Fresh Fruit packing & handling; Including Storage	7.22
2116	Fruit Juice or Concentrate Mfg.	7.26
2102	Fruit or Vegetable Evaporation or Dehydrating	5.00
8304	Grain Elevators or Grain Storage Warehouses	10.39
2014	Grain or Rice Milling	8.75
8215	Hay, Grain or Feed Dealers	10.26
2002	Macaroni Mfg.	7.77
2095	Meat Products Mfg.-NOC Including Canning	6.19
2106	Olive Handling- Sorting,curing,packing,canning including Olive Oil Mfg.	7.99
0016	Orchards- Citrus & Deciduous Fruits	9.89
0045	Orchards-Nut Crops	7.71
2106	Pickle Mfg.	7.99
0041	Potato Crops	4.52
0034	Poultry Raising, Egg Production &Hatcheries	9.57
9079	Restaurants or Taverns-All Employees	4.79
8742	Salespersons-Outside	0.83
4000	Salt Production-by Solar Evaporation exclusively	5.96
8102	Seed Merchants-including operation of seed sorting machinery	4.20
0034	Sheep Raising & Hog Farms	9.57

5/19/98 - food4.wpd

<u>Code</u>	<u>Description</u>	<u>Rates</u>
0038	Stock Yards	16.35
2081	Stockyards-with/without butchering	14.38
8006	Stores-Delicatessen-retail	4.94
8117	Stores-Feed,tack & farm supplies-retail	7.86
8006	Stores-Fruit or Vegetables-retail	4.94
8061	Stores-Groceries or provisions-convenience-retail	9.20
8006	Stores-Groceries or provisions-retail	4.94
8031	Stores-Meat, fish or poultry-retail	7.27
8021	Stores-Meat, fish or poultry-retail	11.96
8017	Stores-Retail, NOC	4.14
8060	Stores-Wine, Beer or Spirits-Retail	6.91
8041	Stores-Wine or spirits-wholesale, including blending, rectifying, distilling or bottling	9.56
0079	Strawberry Crops	6.26
2030	Sugar Mfg. or Refining- beet or cane	7.60
0172	Truck Farms	7.58
2117	Vegetable or Fruit Processors-Frozen	10.60
8209	Vegetables-Fresh vegetable and tomato packing and handling-including storage	9.25
9079	Vending Concessionaires-Dispensing food,drinks,candy,etc.at ball parks,race tracks,theaters & exhibitions	4.79
0040	Vineyards	5.64
4831	Vitamin or Food Supplement Mfg.-compounding,blending or packaging only	4.58
2142	Vinegar Mfg.	6.13

5/19/98 - food4.wpd

<u>Code</u>	<u>Description</u>	<u>Rates</u>
8291	Warehouses-Cold Storage	7.31
0400	Warehouses-Cotton, including cotton compressing "cotton gin operation"	9.67
8215	Warehouses-Grain or bean-including cleaning & handling	10.26
2142	Wineries-All operations	6.13

5/19/98 - food4.wpd

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Approved Classification Codes: Arizona

Effective: October 1997

<u>Code</u>	<u>Description</u>	<u>Rates</u>
7421	Aircraft Operations, Transport of Personnel	2.60
2003	Bakeries & Cracker Mfg.	6.31
2121	Breweries/Malt Houses-Incl Bottling/Canning	2.94
2111	Canneries, NOC-Incl Fruit Preserving	7.85
8810	Clerical Office Employees, NOC	.41
6504	Confections&Food Sundries,Mfg.orProc NOC	4.03
0401	Cotton Gin Operation	14.14
0400	Cotton Merchants	11.73
4683	Cottonseed Oil Mfg. & Refining	4.34
0036	Dairy Farms	7.53
2014	Feed Mfg.Prep&Compounding Feeds for Livestock & Poultry	8.81
8304	Grain Elevators or Grain Storage Warehouses	18.10
2014	Grain or Rice Milling	8.81
8215	Hay,Grain or Feed Dealers	10.00
2002	Macaroni Mfg.	8.29
2095	Meat Products Mfg.-NOC Including Canning	14.04
0016	Orchards-Citrus & Deciduous Fruits	5.36
0034	Poultry Raising, Egg Production & Hatcheries	5.39
9082	Restaurants or Taverns-All Employees	2.81
8742	Salespersons-Outside	.53
4000	Salt Products-by Solar Evaporation exclusively	6.59
8102	Seed Merchants-including operation of seed sorting machine	4.98

5/19/98 - food4.wpd

FIC/FSIM 000094

<u>Code</u>	<u>Description</u>	<u>Rates</u>
0034	Sheep Raising & Hog Farms	5.39
2081	Stockyards-with/without butchering	4.57
8006	Stores-Delicatessen-retail	4.14
8006	Stores-Fruit or Vegetables-retail	4.14
8006	Stores-Groceries or provisions-retail	4.14
8031	Stores-Meat, Fish or poultry-retail	3.18
8021	Stores-Meat, fish or poultry-retail	5.43
8017	Stores-Retail, NOC	1.99
2021	Sugar Mfg. or Refining-beet or cane	2.40
8209	Vegetables-Fresh vegetable and tomato packing and handling-including storage	3.67
9082	Vending Concessionaires-Dispensing food, drinks, candy, etc. at ball parks, race tracks, theaters & exhibitions	2.81
8291	Warehouses-Cold Storage	6.48
8215	Warehouse-Grain or bean-including cleaning & handling	10.00

This Addendum shall not go into force until duly executed on behalf of Agent and Company.

IN WITNESS WHEREOF, the parties have set their hands:

at Rock Hill, NY

this 12th day of January, 1998

FRONTIER INSURANCE COMPANY

By: Kevin F. Jeffery
Kevin F. Jeffery
Senior Vice President

at Roseville, California

this 8th day of December, 1998

DWIGHT HALVORSON INSURANCE SERVICES

By: Dwight J. Halvorson

Name: DWIGHT J. HALVORSON

Title: President

Addendum No. 3

It is hereby agreed that effective 01/01/98 item (B) of Addendum No. 1 "Schedule of Business" to the Limited Agency Agreement executed between Frontier Insurance Company and Dwight Halvorson Insurance Services is replaced by the following:

(B) Territory:

Arizona, California, Colorado, Texas

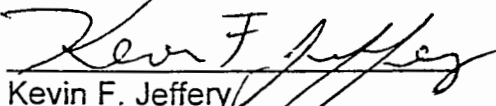
All other terms and conditions remain as originally agreed to by Frontier Insurance Company and Dwight Halvorson Insurance Services.

IN WITNESS WHEREOF, the parties have set their hands:

at Rock Hill, NY this 24th day of Dec, 1998

FRONTIER INSURANCE COMPANY

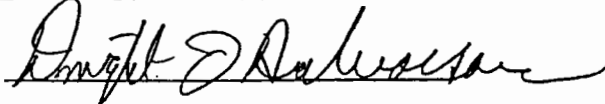
By:


Kevin F. Jeffery
Senior Vice President

at Roseville, CA this 31 day of Dec., 1998

DWIGHT HALVORSON INSURANCE SERVICES

By:



Name: Dwight J. Halvorson

Title: President

ADDENDUM NO. 3 TO
LIMITED AGENCY AGREEMENT BETWEEN
FRONTIER INSURANCE COMPANY ("COMPANY")
AND
DWIGHT HALVORSON INSURANCE SERVICES, INC. ("AGENT")

In consideration of the Limited Agency Agreement, Company shall loan Agent \$200,000 pursuant to a Promissory Note in the form annexed hereto as Exhibit A (the "Loan").

Company shall forgive repayment of the Loan subject to the following conditions:

1. The Limited Agency Agreement remains in full force and effect at all times while any part of the Loan remains unpaid;
2. Upon the first anniversary of the Loan, the Company shall forgive repayment of one-third of the original principal, plus a proportional share of interest, so long as Agent's premium volume under the Limited Agency Agreement is equal to or greater than \$5.0 million during that year;
3. Upon the second anniversary of the Loan, the Company shall forgive repayment of a second one-third of the original principal, plus a proportional share of interest, so long as Agent's premium volume under the Limited Agency Agreement is equal to or greater than \$8.0 million during that year; and

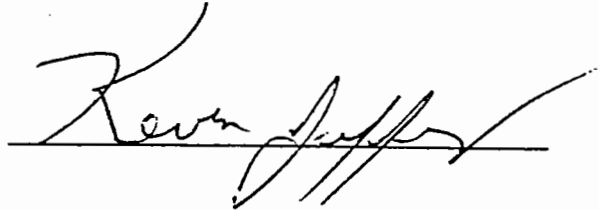
4. Upon the third anniversary of the Loan, the Company shall forgive repayment of all remaining principal and interest, so long as Agent's premium volume under the Limited Agency Agreement is equal to or greater than \$12.0 million during that year.

5. All other terms and conditions of the Limited Agency Agreement remain unchanged and are hereby ratified and reaffirmed.

DATED: May 29, 1998

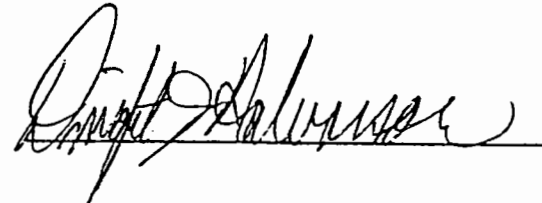
FRONTIER INSURANCE COMPANY

By:

A handwritten signature in dark ink, appearing to read "Kevin Jaffer", written over a horizontal line.

DWIGHT HALVORSON INSURANCE
SERVICES, INC.

By:

A handwritten signature in dark ink, appearing to read "Dwight Halvorson", written over a horizontal line.

(doc.limtagr5)

PROMISSORY NOTE

\$200,000.00

Roseville, California
May 29, 1998

DWIGHT HALVORSON INSURANCE SERVICES, INC, a California corporation, and DWIGHT J. HALVORSON, an individual, for value received, hereby promise, jointly and severally, to pay on demand to the order of Frontier Insurance Company, a New York corporation ("Frontier") at its offices at 195 Lake Louise Marie Road, Rock Hill, New York 12775-8000, or such other address as Frontier may designate, the principal amount of Two Hundred Thousand Dollars (\$200,000.00), together with interest thereon at an annual rate of 7.0%.

We hereby waive presentment for payment, protest, notice of protest and notice of nonpayment of this Promissory Note. It is further agreed that any delay on the part of the payee in exercising any of its rights hereunder shall not operate as a waiver of said rights.

In the event this Promissory Note is collected by an attorney, either with or without suit, we hereby agree to pay a reasonable attorney's fee and all expenses of collection.


- 1 -

EXHIBIT A

This Note has been issued pursuant to Addendum No.3 dated May 29, 1998 to a Limited Agency Agreement between Frontier and DWIGHT HALVORSON INSURANCE SERVICES, INC.

DWIGHT HALVORSON INSURANCE SERVICES, INC.

By: 
Dwight J. Halvorson, President


DWIGHT J. HALVORSON
INDIVIDUALLY AND PERSONALLY

I N T E R

O F F I C E

MEMO

To: Mark Mishler
From: Kevin Jeffery
Subject: Food Services Insurance Managers
Promissory Note and Addendum No. 3 to Limited Agency Agreement
Date: June 4, 1998

Mark,

Per our previous discussions with Peter Foley and myself, attached find the original Promissory Note and a copy of Addendum No. 3 to the Limited Agency Agreement for the Food Services Insurance Managers program in California.

Let me know if there is anything else you need to cut a check.

KJF:jr

cc: Harry Rhulen - without attachments
Peter Foley - with attachments

Addendum No. 4

It is hereby agreed that effective 01/01/99, item 4.1 of Article 4 - Compensation of the Limited Agency Agreement executed between Frontier Insurance Company and Dwight Halvorson Insurance Services is replaced by the following:

4.1 Except as otherwise specified on the Schedule of Business, Company shall allow Agent a gross commission of 15.65% of all gross written premium collected for Policies underwritten or delivered by Agent hereunder. This commission arrangement shall be reviewed from time to time and shall be subject to adjustment at the discretion of the Company on a prospective basis and upon at least sixty (60) days prior written notice to the Agent.

All other terms and conditions remain as originally agreed to by Frontier Insurance Company and Dwight Halvorson Insurance Services.

IN WITNESS WHEREOF, the parties have set their hands:

at Rock Hill, NY this 24th day of Dec, 1998

FRONTIER INSURANCE COMPANY

By: [Signature]
Kevin F. Jeffery
Senior Vice President

at Roseville, CA this 31 day of Dec., 1998

DWIGHT HALVORSON INSURANCE SERVICES

By: [Signature]

Name: Dwight J. Halvorson

Title: President

Addendum No. 5

It is hereby agreed that effective 01/01/99 Addendum #2 to the Limited Agency Agreement executed between Frontier Insurance Company and Dwight Halvorson Insurance Services is amended as follows:

Item 1. of I. Underwriting Guidelines is replaced by the following:

1. The prospective insured's net premium is \$2,000 or greater;

Item 2. of I. Underwriting Guidelines is replaced by the following:

2. Experience modification factors shall be obtained prior to quoting any new or renewal risk. Experience modification factors shall be obtained from the NCCI or state governed insurance rating bureau as applicable. Experience modification factors must be 1.50 or lower based on three (3) years or more of loss experience. Recent trending (current plus prior year) for both frequency and severity must be positive (downward trend) for any risk having in excess of a 1.25 experience modification factor.

Item 3. of I. Underwriting Guidelines is replaced by the following:

3. Agent has secured three (3) years plus current year of currently valued (within 120 days) hard copy loss runs, including large losses in excess of \$25,000. Such loss runs shall be obtained prior to quoting any new or renewal risk. Risks having less than three (3) years of experience shall be eligible for inclusion in the program provided they have had prior experience in either an ownership or management capacity, in the same type of operation, for a period of five (5) years or more.

Item 4. of I. Underwriting Guidelines is hereby deleted.

Item 9. of I. Underwriting Guidelines is replaced by the following:

9. California

A maximum thirty percent (30%) schedule credit may be applied to risks with standard premium ranging from \$2,000 to \$49,999.

A maximum fifty percent (50%) schedule credit may be applied to risks with standard premium ranging from \$50,000 to \$999,999,

A maximum forty-five percent (45%) schedule credit may be applied to risks with standard premium of \$1,000,000 or more.

Arizona

A maximum twenty-five percent (25%) schedule credit may be applied to any risk bound in the State of AZ.

Colorado

A maximum twenty-five percent (25%) schedule credit may be applied to any risk bound in the State of CO.

Texas

A maximum twenty-five percent (25%) schedule credit may be applied to risks in the State of TX.

A yearly average of plus or minus forty percent (40%) of Company's filed rates must be maintained on the overall book of business.


All other terms and conditions remain as originally agreed to by Frontier Insurance Company and Dwight Halvorson Insurance Services.

IN WITNESS WHEREOF, the parties have set their hands:

at Rock Hill, NY this 24th day of Dec, 1998

FRONTIER INSURANCE COMPANY

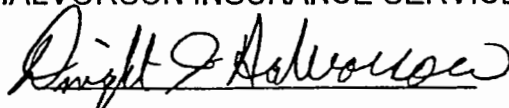
By:


Kevin F. Jeffery
Senior Vice President

at Roseville, CA this 31 day of Dec., 1998

DWIGHT HALVORSON INSURANCE SERVICES

By:



Name: Dwight J. Halvorson

Title:

President

Addendum No. 6


It is hereby agreed that item (B) of Addendum No. 1 "Schedule of Business" to the Limited Agency Agreement executed between Frontier Insurance Company and Dwight Halvorson Insurance Services is extended to the States of Maryland and New Jersey with respect to coverage bound for Amy's Kitchen. This extension of coverage is applicable to the aforementioned risk only. All other terms and conditions remain as originally agreed to by Frontier Insurance Company and Dwight Halvorson Insurance Services.

IN WITNESS WHEREOF, the parties have set their hands:

at Rock Hill, NY this 24th day of Dec, 1998

FRONTIER INSURANCE COMPANY

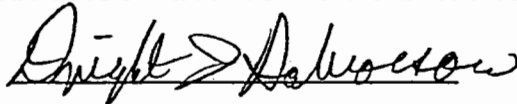
By:


Kevin F. Jeffery
Senior Vice President

at Roseville, CA this 31 day of Dec., 1998

DWIGHT HALVORSON INSURANCE SERVICES

By:



Name: Dwight J. Halvorson

Title:

PRESIDENT

VISIT OF DWIGHT HALVORSONS & DAN HENKE

Thursday, May 21, 1998

8:30AM - 10:00AM	Dick & Janet
10:00AM	Brief "hello" with Harry, if available Presently scheduled to be out of town
10:00AM - 11:00AM	Jerry Hartwick/Reinsurance - confirmed
11:00AM - 11:30AM	Nancy Bowden/State Filings - confirmed
12Noon - 1:00PM	Lunch Janet/Kevin
1:00PM - 1:00PM	Lori Brahs/Claims - confirmed
2:00PM - 2:30PM	?Joe Daches/Rocco Capuano/Dan Howard/Finance?
2:30PM	Peter Foley, if available Presently scheduled to be out of town
2:30PM -	Kevin/Janet

- Not sure of Kevin's plans
at this point.
- Did you tell Joe Daches
et al what they will
want?

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UNDERWRITING AGENDA

~~6/4/98 MEETING WITH DWIGHT HALVORSON AND DAN HENKE~~

Accounts Bound Outside of Parameters of Underwriting Guidelines

- North State Grocery

No referral made despite experience modification factor of 1.91.

- Holiday Quality Foods, Inc.

No referral made despite experience modification factor of 1.99.

- La Tapatia Tortilleria

Premium was cut by \$20,607 without submitting for re-approval.

- Country Gold Farm Services, Inc.

Does not meet minimum experience requirements. Bound despite written declination.

Administration

- Dec page, class of operations page and schedule of forms and endorsements to be forwarded to my attention for each risk bound into program within 10 days of policy issuance.
- F.S.I.M. to be responsible for forwarding policies directly to the NCCI.

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VISIT OF DWIGHT HALVORSON & DAN HENKE

Thursday, June 4, 1998

Wednesday, June 3:

Approx. 6:30PM Kevin and Dick - dinner at The Old Homestead

Thursday, June 4:

8:30AM - 10:00AM Dick and Janet

10:00AM Brief "hello" with Harry - **confirmed will be in Rock Hill
but no specific time set**

10:15AM - 11:00AM Jerry Hartwick - Reinsurance - **confirmed**

12 NOON - 1:00PM Lunch - Kevin, Dick and Janet

1:00PM - 2:00PM Dave Jackson - Pioneer Claims - **confirmed**

Mark Mishler

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**facsimile
TRANSMITTAL**

to: George Hagosian
fax #: (916) 773-0402
re: STATE EXPANSION
date: June 24, 1998
pages: 1, including this cover sheet.

George,

This is in response to your fax of June 22nd regarding expansion of the current F.S.I.M. program to the states of CO and TX.

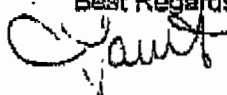
Kevin Jeffery, Dick Marshall and I discussed this issue at length with Dwight Halvorson and Dan Henke during their recent visit to Rock Hill. Per our discussions, while we are not adverse to expanding the program based on a sound business plan and reasonable expectation of premium volume in a given state, we are not looking to expand the current program as an accommodation for incidental exposures.

As you are well aware, tax rates, resident claims adjusting requirements, mandatory loss control requirements, state banking requirements and other important issues must be considered when contemplating program expansion. As a result, any proposed expansion must be carefully considered in terms of long-term goals and overall business plan. Should we (jointly) determine that expansion is warranted based on anticipated premium volume, we will require significant lead time to research these and other related issues to ensure that any state expansion is beneficial to the overall program in full compliance with various state regulations.

Should you wish to include risks having incidental exposures outside the states of CA and AZ in the program we suggest that the incidental exposures be funneled through the assigned risk pool.

As always, please call me with any questions.

Best Regards,



Janet

cc:

Dwight Halvorson
Kevin Jeffery
Dick Marshall

From the desk of...

Janet L. Backer
Program Manager
Alternative Risk Division
195 Lake Louise Marie Road
Rock Hill, NY 12775-8000

(800) 836-2100 ext. 5331
Fax: (914) 796-1005

SEP. 24. 2004 10:53AM FRONTIER

09/24/2004 12:52 2128947280

ENTWISTLE & CAPPUCCI

PAGE 04/07

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From: Juliet Reggero
 To: FIG12.FIG12.NMULVEY
 Date: 7/28/99 3:54pm
 Subject: Request for Limos - Dwight Halvorson - Thurs & Fri, 7/29 & 30 -Reply -Reply
 -Reply -Reply

To confirm the arrangements for the 4 gentlemen: Dwight Halvorson, Jason Gamache, George Hagopian and Ed Wilson:

Thursday, July 29:

4:31PM Meet Dwight, Jason and George at Terminal A, Newark Airport.
 They have been advised Peter will be in baggage claim holding a "Frontier" sign and that they should go there regardless of whether they checked bags.
 Limo will then go to TWA Terminal, Newark, and meet Ed Wilson off TWA 136 ETA 4:33PM (I am working on obtaining a copy of his itinerary). He has been asked to go to arrivals exit and to watch for the limo. If they don't connect the first time around, one of them will go into the terminal to look for him.

The limo will then bring them all back to The Hampton Inn, Middletown.

Friday, July 30

(Janet Backer will give them a ride up here on Friday morning.)

We would like two options:

1. Could the limo be on standby for a 12 noon departure from Rock Hill? Perhaps the driver could give you a call about 11:00AM?
 Providing business is concluded, they will all leave for Newark.
 George would like to take a 3:00PM United flight if possible.
 Ed Wilson is scheduled to be on a TWA flight departing Newark at 5:30PM.
 Jason and Dwight should be taken to the Marriott Newark (their flight leaves at 7:15AM on Saturday).

2. Should business not be concluded for a 12 noon departure, we would like the limo to be available at 1:30PM to take them all to Newark, which will leave plenty of time to get down for Ed's 5:30PM flight and George's reserved flight at 6:45PM.

I apologize for the request for flexibility and hope you are able to work with us on this one.

>>> Nita Mulvey 07/28/99 11:28am >>>

Peter will do the trip, and he will have the suburban. Do you think that Ed could wait on the outside of the building (right outside - (TWA arrivals) so the driver doesn't have to park the car with the guys in it? Do the other folks know Ed to recognize him? You could also just tell him to look for the green suburban with NY license plates.

Thanks
 Nita

>>> Juliet Reggero 07/28/99 08:53am >>>

Are you able to give me name of driver and limo for p/a tomorrow?

I just heard that Ed Wilson is also traveling in and will arrive at Newark off TWA flight 136

ETA 4:33PM tomorrow.

Could the driver pick up the passengers from the United flight and then go to TWA terminal?

I will obtain return information from everyone today!

>>> Nita Mulvey 07/27/99 11:35am >>>

I think that sounds like a good idea - otherwise they would have to leave here around 4:30am.
Let me know.

Thanks,
Nita

Juliet Reggero 07/26/99 03:06pm >>>

In follow-up to my e-mail of 7/22, there will be a 3rd member of the party, George Hagopian, who will ride up from Newark on Thursday.

As far as the return trip is concerned, George leaves at 6:45PM on Friday out of Newark and the other two at 7:15AM on Saturday. I have recommended they all travel to Newark on Friday afternoon. I'm awaiting confirmation of their plan and will keep you advised.

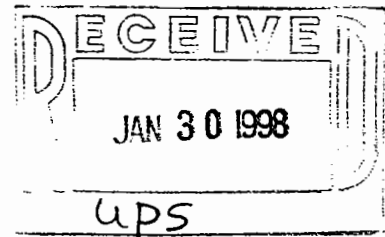
CC: RMARSHALL, JBACKER

F.S.I.M.
FOOD SERVICES INSURANCE MANAGERS, INC.

3300 Douglas Blvd., Suite #295
Roseville, CA 95661
(916) 773-0206

January 29, 1998

Ms. Janet Backer
Frontier Insurance Company
195 Lake Louise Marie Road
Rock Hill, NY 12775



Sorry for the delay, but as we discussed by phone, I've been involved with putting together an analysis/quotation/proposal on a \$1.6 million risk which presents on February 3, 1998.

I have enclosed complete information on all risks bound effective 1/1/98 (one was 1/3/98) with **Frontier**. I have also attached a "**F.S.I.M./FRONTIER ISSUANCE LOG**", which lists the nine (9) accounts, noting their effective date, E.A.P., Policy Number, Ex.Mod., Credit/(Debit), and Governing Class. This log will serve as an easy reference for you, and will be updated as we produce more accounts into the program.

As you will notice, a couple of the accounts are beyond the boundaries set forth in your December 31, 1997 letter on Underwriting/Pricing/Binding Authority. We had talked about this, and since time constraints didn't allow full adherence to the guidelines, you said an exception would be allowed. We appreciate this, and promise that all future accounts will follow the guidelines to the letter.

Please also notice that three (3) of the nine (9) accounts are under the \$50,000 threshold. That is because they are related to larger accounts written. Specifically,

- Dunlap Management \$38,060 is related to Coachella Valley Citrus
- Growers Transport \$54,615 is related to Coachella Valley Citrus
- Bar 20 Dairy is related to Producer's Dairy

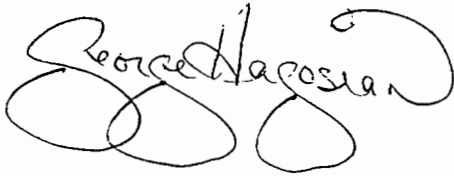
It was necessary to write the "smaller" accounts with the aforementioned "larger" accounts as it was the desire of the decision maker at the insured to keep all accounts with one carrier.

When we determine how to apply the CA State Assessment Charges, and receive the additional policy materials, we will produce the policies and forward a copy of each to your attention.

I have also attached a copy of a "**Account Current Bordereaux**" that we will be using, for your review and approval.

Thank you for all your assistance, and patience. We all enjoy working with you and feel that we are off to an excellent start.

Sincerely,

A handwritten signature in cursive script, reading "George Hagosian". The signature is fluid and stylized, with the first and last names being more prominent than the middle name.

George Hagosian
Vice President Underwriting/Marketing

[illegible]

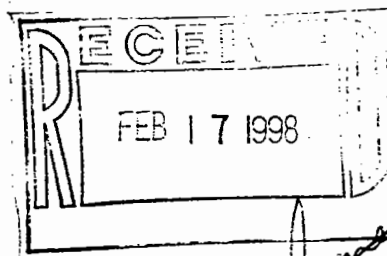
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Kevin -
Please
review and
advise.
Janet

F.S.I.M.
FOOD SERVICES INSURANCE MANAGERS, INC.

Fax # (916) 773-8402

====FAX=====



NAME: JANET BACKER

COMPANY: Frontier Ins. Co.

FAX #: (914) 796-1005

FROM: GEORGE HAGOSIAN

of Pages 4 [including this cover page]

Date: Feb. 17, 1998

Comments: PLEASE SEE ATTACHED,
Thanks.

George

let's try
it as the
suggested
see how it
unfolds.

2-17-98

**If you do not receive all of the pages indicated above, please give us a call at
(916) 773-0206.

F.S.I.M.
FOOD SERVICES INSURANCE MANAGERS, INC.

3300 Douglas Blvd., Suite #295
Roseville, CA 95661
(916) 773-0206

February 17, 1998

Ms. Janet L. Backer
FRONTIER INSURANCE COMPANY
195 Lake Louise Marie Road
Rock Hill, New Your 12775-8000

Dear Janet,

Thank you for your review and comments regarding the initial risks bound into the FSIM program for January 1998. As we all attempted to put this thing together, in record time, we knew that there would be "rough edges" needing refinement at a latter date. We appreciate Kevin Jeffery and you, giving us the latitude to bind coverage, "outside" the prescribed parameters of the program.

As we had disclosed to you, during the formative stages of the program, we were quoting Frontier, without any "set" parameters (they were not received until 12/31/97), so as not wanting to miss January opportunities.

It was, has been, and will continue to be our desire to make this partnership both productive in volume, and profitable from an underwriting perspective. As I mentioned in my January 29, 1998 letter to you, all future risks will follow the guidelines (detailed in addendum #2) "to the letter".

As regards the "**F.S.I.M./FRONTIER ISSUANCE LOG**", the EAP will be reflected as bound premium from the Pricing Worksheet rather than "net rate" calculated premium. This was an error on my part, copied the wrong information. I have attached a "revised" log for your reference. The bordereau will report this amount.

In regards to Addendum #3, we have some issues. During the formation of our partnership, we were "up front" with the fact that there exists a formidable competitive climate in California. We had told you that we averaged approximately 35% deviation on our Cal Comp book, (note their filed rates are lower than your filed rates). The general "average" amount of credits being afforded by carriers desiring to compete for business is between 45 and 48%.

On the January business we quoted and bound with you, FSIM used an average of 34% credits, that being Modified Premium plus Scheduled Credits (before Premium discount). If we add the Premium Discount, all total deviation from Modified Premium averaged 41%. Either way both are below the carrier average in the state.

We feel that if we follow the guidelines outlined in Addendum #2, additional latitude should be afforded to our efforts in the area of pricing, than outlined in Addendum #3. Limiting us to 20% maximum credits will result in our submitting the vast majority of our accounts to you. This basically eliminates the Underwriting/Pricing Authority we need to make the program flow efficiently.

To make our program effective we need that ability to underwrite and price competitively. This is a point we have emphasized throughout our negotiations with Frontier. Addendum #3 comes as a surprise and disappointment to us.

Please reconsider the scope of Addendum #3. We would like to recommend the following parameters (all with the full compliance to guidelines set forth in Addendum #2),

1. On risks with premium of **\$50,000 to \$149,999 Max. 30%** Credit/Debit without prior approval by Frontier underwriting.
2. On risks with premium of **\$150,000 to \$599,999 Max of 45%** Credit/Debit without prior approval by Frontier underwriting.
3. On risks with premium of **\$650,000 plus Max of 40%** Credit/Debit without prior approval by Frontier underwriting.

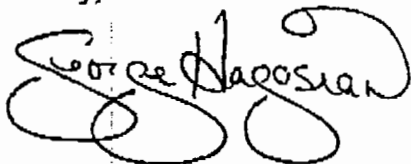
*incorporated
into
2/19/98
draft of
Addendum
#2*

Please call me following your review and consideration to this letter. We are beginning to work on several accounts with March and April anniversary dates. One being a March 1st, that we meet with for a needs assessment on February 20th, and will have to present within three to four days following that meeting. In many instances like this one, we will not have a lot of time to do our underwriting analysis, price, then forward for approval.

Our relationship, to date, has been fantastic. We appreciate all that Frontier has done, in creating this program. We want it to grow. Please help us by accommodating us on this request.

As always, thank you for your consideration and willingness to work with us.

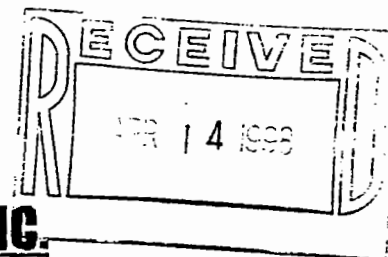
Sincerely,



George Hagosian
Vice President Underwriting

<u>Account</u>	<u>Efec.</u>	<u>New</u>	<u>E.A.P.</u>	<u>Policy #</u>	<u>Ex.Mod.</u>	<u>Credit</u>	<u>Gov.</u>
<u>Name</u>	<u>Date</u>	<u>Renewal</u>				<u>(Debit)</u>	<u>Class</u>
Coachella Valley Citrus	1/1/98	N	\$ 495,044	WC 38851	1.82	20%	0016
Dunlap Management	1/1/98	N	\$ 38,250	WC 38852	1.59	45%	0016
Growers Transport	1/1/98	N	\$ 54,607	WC 38853	1.72	45%	7219
Producer's Dairy	1/1/98	N	\$ 213,707	WC 38854	1.16	43.50%	2063
Bar 20 Dairy	1/1/98	N	\$ 45,336	WC 38855	1.16	45%	0036
Sierra Citrus Assoc.	1/1/98	N	\$ 113,895	WC 38856	1.13	38%	2108
V & L Farms	1/3/98	N	\$ 79,634	WC 38857	0.76	42%	0079
George Perry & Sons	1/1/98	N	\$ 79,519	WC 38858	1.24	40%	0172
Nature Quality	1/1/98	N	\$ 71,447	WC 38859	1.47	40%	6504
TOTALS			\$ 1,191,439				

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F.S.I.M.
FOOD SERVICES INSURANCE MANAGERS, INC.
Fax # (916) 773-0402

===FAX===

NAME: Ms. Janet Backer

COMPANY: Frontier Ins. Co.

FAX #: (914) 796-1005

FROM: George Haganian

of Pages 2 [including this cover page]

Date: April 13, 1998

Comments: Janet, Thanks for all your work on
Cal West, we appreciate it. I wanted to quickly
respond to your cover memo. I am in the process of
putting together our 1st quarter results & will forward a copy
to you. I did attach prior results - losses valued
as of 2/2/98 + EP valued as of 1/1/98 - for your review.
Thought that I sent these, but must have forgotten. Thanks

**If you do not receive all of the pages indicated above, please give us a call at
(916) 773-0206.

George

F.S.J.M. MONTHLY RESULTS REPORT '98 Calendar Frontier Total

[illegible]

January 1998

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APR. -24' 98 (FRI) 11:38

D.H. S.

TF 916 773 0402

P.002



Dwight Halvorson
INSURANCE SERVICES

TO: PETER FOLEY
FROM: TONY MILLER
DATE: APRIL 24, 1998

RE: ACQUISITION FUNDING,

PETER,

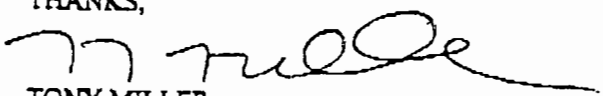
PLEASE WIRE THE TRANSFER TO THE BANK OF AMERICA, ROSEVILLE MAIN OFFICE

120 2221 DOUGLAS BLVD. ROSEVILLE, CA 95661

ACCOUNT # 01206- 03957

ABA 11-35/1210

THANKS,


TONY MILLER

Ed Sorensen
Vice President and Manager Roseville Main Office 0120

Bank of America NT&SA
2221 Douglas Boulevard
Roseville, CA 95661
916/781-4518 (BAnet 631)



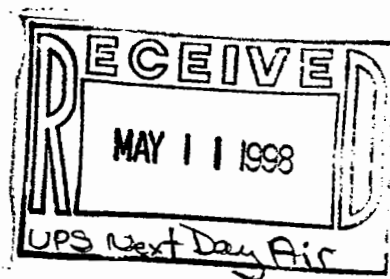
Bank of America

© 1998 Bank of America

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F.S.I.M.
FOOD SERVICES INSURANCE MANAGERS, INC.

==MEMORANDUM==



TO : Janet Backer
FROM : George Hagopian
DATE : May 8, 1998
SUBJECT : *Issuance Log & Credit Allocation Log/Explanation*

As promised in a previous memo, I have attached an updated ***F.S.I.M./FRONTIER ISSUANCE LOG***. This one reflects not only the new accounts to the program, but also the "changed" premiums, credits, etc., caused by the re-ratings incorporating the 1997 rates. (All 5/1/98 policies shown have been rated utilizing the 1998 rates).


We are in the process of typing up all policies, and will forward your copies ASAP.

I have also attached a ***F.S.I.M./FRONTIER CREDIT ALLOCATION*** summary form, for your review and reference. Please note that this spreadsheet (like the Issuance Log) has those policies with effective dates prior to 5/1/98, reflecting premiums derived from your 1997 rates. Prior to the re-ratings the average (and for that matter, individual) credits were considerably lower. As you remember, additional credits had to be applied to "match" the premiums quoted and sold and bound using the 1998 rates.

When we take the total premiums written (15 policies, excluding Bar 50 Dairy due to pending action regarding additional credits) the average credits before application of premium discount is **39%**! In the extremely competitive California marketplace, that is extraordinary. The average credit with premium discount is 45% - also extraordinary.

The seven (7) new accounts bound into the program since 1/1/98 have averaged **40%** before premium discount. With application of premium discount the average credit is 46%. The 1/1/98 accounts (ex Bar 20) reflect an average credit of **37%** before premium discount, 43% with the application of premium discount. The combined effect is reflected in the paragraph above.

We are very pleased with the management of credits, and the growth of the book, to date. We sincerely hope that you concur.

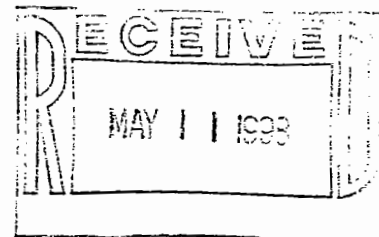
Thanks,


F.S.I.M./FRONTIER ISSUANCE LOG

F.S.I.M./FRONTIER
CREDIT ALLOCATION

<u>Account</u>	<u>Prem.</u> <u>with Mod</u>	<u>Prem.</u> <u>with Credit</u>	<u>Deviation</u> <u>%</u>	<u>Prem.</u> <u>Crd. +Pm.Disct.</u>	<u>Deviation</u> <u>%</u>
Holiday Quality Foods	\$ 677,179	\$ 413,079	39%	\$ 366,814	46%
Holiday Ranches	\$ 50,685	\$ 28,384	44%	\$ 26,170	48%
North State Grocery	\$ 1,265,688	\$ 759,413	40%	\$ 670,562	47%
Cal West Farming	\$ 880,268	\$ 563,372	36%	\$ 499,148	43%
Organic Food Prod.	\$ 94,455	\$ 67,063	29%	\$ 61,161	35%
SK Foods	\$ 275,880	\$ 146,216	47%	\$ 131,741	52%
La Tapatia	\$ 224,552	\$ 121,258	46%	\$ 109,738	51%
V & L Farms	\$ 172,993	\$ 86,497	50%	\$ 78,712	54%
Sierra Citrus Assoc.	\$ 212,023	\$ 125,094	41%	\$ 113,085	47%
Geo. Perry & Sons	\$ 159,528	\$ 86,145	46%	\$ 78,478	51%
Nature Quality	\$ 132,817	\$ 78,362	41%	\$ 71,388	46%
Growers Transport	\$ 115,797	\$ 59,056	49%	\$ 53,918	53%
Coachella Valley Citrus	\$ 738,265	\$ 553,699	25%	\$ 490,577	34%
Dunlap Management	\$ 81,853	\$ 41,745	49%	\$ 38,238	53%
Producers Dairy	\$ 391,952	\$ 235,171	40%	\$ 210,008	46%
TOTALS	\$ 5,473,935	\$ 3,364,554	39%	\$ 2,999,738	45%
NOTE: Excluded Bar 20 Dairy from listing above, due to fact that "final/adjusted" prem/credits have not yet been determined.					

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*Copy Peter Foley
5/11.*

May 11, 1998

Kevin Jeffery
Frontier Insurance Group, Inc.

Dear Kevin,

Thank you for reconsidering the loan to F.S.I.M. for \$200,000 to purchase the book of business from AON effective 4/1/98. We have already placed well over \$3,000,000 with Frontier since 1/1/98 and expect that figure to be significantly higher by July 1, 1998. The purchase price for the AON book is \$450,000. F.S.I.M. would like to borrow the \$200,000 to make the down payment and first installment. F.S.I.M. would like to repay the loan to Frontier over 3 years beginning 1/1/99, and will comply with the following conditions.

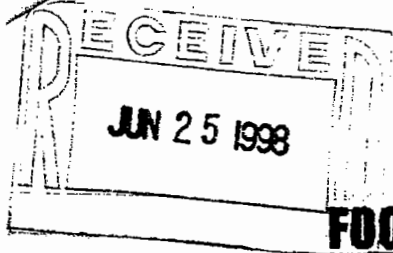
1. Dwight Halvorson will sign a personal guarantee for the \$200,000.
2. F.S.I.M. will place a minimum of \$4,000,000 of premium volume with Frontier in the first year, will maintain an aggregate limit of \$10,000,000 by the end of year 2 and will achieve an aggregate limit for year 3 of \$15,000,000.

If you need additional information please call me. Again thank you for your support. We look forward to Frontier being a long-term partner in F.S.I.M.'s growth.

Sincerely,

Dwight J. Halvorson
President

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**F.S.I.M.
FOOD SERVICES INSURANCE MANAGERS, INC.**

Fax # (916) 773-0402

===FAX===

NAME: Janet Backer

COMPANY: Frontier Ins. Co.

FAX #: 914 - 796-1005

FROM: Dwight Halvorsen

of Pages 2 [including this cover page]

Date: 6/25/98

Comments: Please find the
attached correspondence.

Thank
you

****If you do not receive all of the pages indicated above, please give us a call at
(916) 773-0206.**

June 21, 1998

Frontier Insurance Co.
Attn: Janet Backer
Program Manager
195 Lake Louise Marie Road
Rock Hill, NY 12775-8000

Dear Janet,

In response to your letter of June 24, 1998, regarding expansion of FSIM's program to Texas and Colorado, I would like to clarify our intentions. FSIM would like to expand its program to Colorado and Texas because of the large volume of business that can be written in those states through our program.

We are confident that our volume in both of these states will easily exceed \$1,000,000 within the first year with the accounts we now control. Where there is incidental exposure in other states, we are glad to use the State Fund or the Assigned Risk pool. Many of our agriculture accounts have growing and harvesting operations in Colorado. We also have acquired an account, Summit Logistics that has a California premium of \$1,500,000. They have plants of similar size both in Texas and Colorado. I would like to expedite this process if at all possible since we are in the process of rolling our Cal Comp book of business to Frontier. Let me know what I need to do to satisfy your requirements for being able to write in these two states.

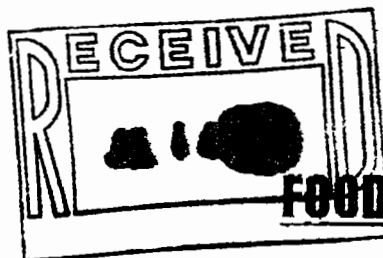
We are already in compliance with the regulations in these states from a claims and loss control standpoint. There is some rollover business and new business that must be placed by July 1, 1998 in Colorado. We're hoping that we can accommodate these accounts since their California premiums are around \$1,000,000. Jamba Juice has very aggressive plans for growth in Arizona, Colorado and Texas.

Janet, I hope this helps us to move forward. After our conversation this morning I understand exactly where you're coming from. I believe we will produce significant volume in all four states in a very short time period.

Sincerely,

Dwight J. Halvorson
President

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URGENT!!

F.S.I.M.
FOOD SERVICES INSURANCE MANAGERS, INC.

Fax # (916) 773-0402

*Please
HAND
Deliver
asap.
Thankyou!*

==FAX==

NAME: Kevin Jeffery

COMPANY: Frontier Insurance Co.

FAX #: 1-914-796-1005

FROM: Dwight Halverson

of Pages 2 [including this cover page]

Date: 7/14/98

Comments: _____

Please review the letter
Attached and call me to discuss
as soon as possible.

Thankyou! Dwight

****If you do not receive all of the pages indicated above, please give us a call at (916) 773-0206.**

*22nd th Sep 11:00
29th
20*



Dwight Halvorson
INSURANCE SERVICES

July 13, 1998

Frontier Insurance Co.
Attn: Kevin Jeffery
195 Lake Louise Marie Road
Rockhill, NY 12775

Dear Kevin:

Recently F.S.I.M. reached an agreement with Ventura County Agriculture Association whereby they endorsed F.S.I.M. as their exclusive Workers' Compensation company. The Association is providing a loss control consultant for their accounts for which they are requiring F.S.I.M. to reimburse them for a twelve month period beginning 7/1/98. The Association would also like \$100,000. for the expense of promoting F.S.I.M. and Frontier to their members for one year.

The Association has moved \$2,300,000. of business from PAULA to F.S.I.M. effective 7/1/98 and will place another \$3,000,000. with us between now and 1/1/99.

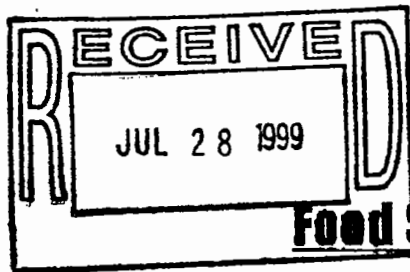
F.S.I.M. is able to pick up the cost of their loss control person, but our cash flow will not enable us to provide the \$100,000. We would like Frontier to help us with this expense. Please let me know if you have any questions.

Sincerely,

Dwight J. Halvorson
Dwight J. Halvorson

DJH/jb

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F.S.I.M.
Food Services Insurance Managers, Inc.

Fax # (916) 797-4950

===FAX===

RUSH

NAME: JANET BACKER

COMPANY: Frontier Ins.

FAX #: (914) 796-1005

FROM: George Hagosian

of Pages 4 (including this cover page)

DATE: July 28, 1998

COMMENTS: per Sue Cole's Request
please see attached
Thanks,

George

****If you do not receive all of the pages indicated above, please
give us a call at (916) 797-4925.**

F.S.L.M. 1998 ISSUANCE LOG

Account	Effec.	New			Gov.
Name	Date	Renewal	E.A.P.	Policy #	Class
✓ Coachella Valley Citrus	1/1/98	N	\$ 490,577	W205000106	0016
✓ Dunlap Management	1/1/98	N	\$ 38,238	W205000107	0016
✓ Growers Transport	1/1/98	N	\$ 53,918	W205000108	7219
✓ Producer's Dairy	1/1/98	N	\$ 210,008	W205000109	2063
✓ Bar 20 Dairy	1/1/98	N	\$ 45,336	W205000125	0036
✓ Sierra Citrus Assoc.	1/1/98	N	\$ 113,085	W205000110	2108
✓ V & L Farms	1/3/98	N	\$ 78,712	W205000111	0079
✓ George Perry & Sons	1/1/98	N	\$ 78,478	W205000112	0172
✓ Nature Quality	1/1/98	N	\$ 71,388	W205000113	6504
✓ La Tapatia Tortilleria	3/31/98	N	\$ 109,738	W205000114	2003
✓ Holiday Quality Foods	4/1/98	N	\$ 366,814	W205000115	8006
✓ North State Grocery	4/1/98	N	\$ 670,562	W205000116	8006
✓ Holiday Ranches	4/1/98	N	\$ 26,170	W205000117	0038
✓ Organic Food Products	5/1/98	N	\$ 61,161	W205000118	6504
✓ SK Foods	5/1/98	N	\$ 131,741	W205000119	2111
✓ Cal West Farming	5/1/98	N	\$ 499,148	W205000120	0172
✓ Desert Packing	7/1/98	N	\$ 187,733	W205000121	0172
✓ The Growers Company	7/1/98	N	\$ 395,619	W205000122	0172
✓ Sunsweet Dryers	7/1/98	N	\$ 134,129	W205000123	2102
✓ Natural Selection Foods	7/1/98	N	\$ 314,379	W205000124	0172
✓ Swiss Louis Restaurant	7/1/98	N	\$ 26,817	W205000126	9079
✓ Spengers	7/1/98	N	\$ 112,543	W205000127	9079
✓ Country Gold Farm	7/1/98	N	\$ 148,085	W205000128	0016
✓ Martinez Farms	7/1/98	N	\$ 44,583	W205000129	0079
✓ Bien Nacido Vineyards	7/1/98	N	\$ 64,926	W205000130	0040
✓ M. Nishimori Farms	7/1/98	N	\$ 88,346	W205000131	0172
✓ B.J. Harvesting	7/1/98	N	\$ 89,792	W205000132	0016

F.S.L.M. 1998 ISSUANCE LOG

<u>Account</u>	<u>Effec.</u>	<u>New</u>	<u>E.A.P.</u>	<u>Policy #</u>	<u>Gov.</u>
<u>Name</u>	<u>Date</u>	<u>Renewal</u>			<u>Class</u>
Luna Fertilizer	7/1/98	N	\$ 18,665	W205000133	0050
✓ Fukutomi Farms	7/1/98	N	\$ 51,141	W205000134	0079
✓ D & V Harvesting	7/1/98	N	\$ 108,380	W205000135	0016
✓ Casper Berry Farms	7/1/98	N	\$ 56,186	W205000136	0079
✓ Hasegawa Farms	7/1/98	N	\$ 32,319	W205000137	0079
✓ Philip McGrath Farms	7/1/98	N	\$ 8,182	W205000138	0079
✓ Conroy Berry Farms	7/1/98	N	\$ 45,454	W205000139	0079
✓ Valley Dorado Ag	7/1/98	N	\$ 194,624	W205000140	0040
✓ Pacifico Berry Farms	7/1/98	N	\$ 172,856	W205000141	0079
✓ Hiji Brothers, Inc.	7/1/98	N	\$ 277,578	W205000142	0172
✓ Santa Clara Farms	7/1/98	N	\$ 67,687	W205000143	0016
✓ Channel Island Berry	7/1/98	N	\$ 67,932	W205000144	0079
✓ Fulfillment Systems	7/1/98	N	\$ 107,912	W205000145	9079
Yamamoto Farms	7/1/98	N	\$ 7,317	W205000146	0005
Bob Jones Ranch	7/1/98	N	\$ 1,914	W205000147	8810
Rancho Guadaluasca	7/1/98	N	\$ 63,582	W205000148	0016
✓ Goldberg & Solovy	8/1/98	N	\$ 119,940	W205000155	8018
✓ Poplar Farms	8/1/98	N	\$ 109,685	W205000157	79
Eclipse Berry Farms	8/1/98	N	\$ 172,000	W205000156	79
✓ Rio Mesa Farms	8/1/98	N	\$ 119,738	W205000158	79
✓ Odwalla	9/1/98	N	\$ 566,360	W205000149	2163
✓ Coronet Foods, Inc	9/1/98	N	\$ 84,253	W205000151	6504
✓ KGM Harvesting	9/1/98	N	\$ 64,105	W205000152	0172
✓ Gudpak	9/30/98	N	\$ 166,400	W205000159	0172
✓ Cal West Farming	9/18/98	R	\$ 695,492	W205000160	0172
✓ Athens Baking	10/1/98	N	\$ 47,574	W205000154	2003
✓ MJS	10/1/98	N	\$ 190,409	W205000153	0172

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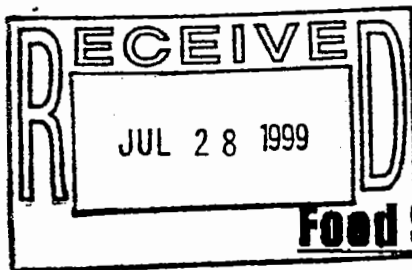
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UNITED C.A.C.

F.S.I.W. 1998 ISSUANCE LOG[illegible]

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F.S.I.M.
Food Services Insurance Managers, Inc.

Fax # (916) 797-4950

===FAX===

RUSH

NAME: JANet BACKer

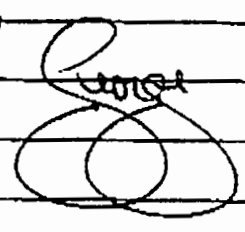
COMPANY: Frontier Ins.

FAX #: (914) 796-1005

FROM: George Hagosian

of Pages 4 (including this cover page)

DATE: July 28, 1998

COMMENTS: per Sue Cole's Request
please see attached
Thanks,


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F.S.L.M. 1998 ISSUANCE LOG

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SK Foods	5/1/98	N	\$ 131,741	W205000119	2111
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F.S.I.W. 1998 ISSUANCE LOG[illegible]

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F.S.I.M.
FOOD SERVICES INSURANCE MANAGERS, INC.

==MEMORANDUM==

TO : Janet Backer
FROM : George Hagosian
DATE : August 13, 1998
SUBJECT : *July 1998 New Business – FSIM Program*

Sorry for the delay in getting this to you, but as busy as 7/1 was, (and somewhat complicated by my taking some vacation time off), post 7/1 has been its equal. In fact we wrote some late July & early August business which will be forwarded to you under separate cover. We also have substantial business in for September!

I have several displays attached to this cover letter, to illustrate the overall book and to help substantiate various business decisions made in the "heat of battle" and caused by circumstances beyond our control. Most of your file copies will have a short memo attached to explain the risk and quotation/underwriting rational.

The first exhibit attached is the "*July '98 Quote/Issue*" listing. This shows the amount of volume we were able to entertain. (Note: It does not list those accounts discussed and declined verbally). You will notice that under the "notes" column various producers and "sub-producers" are mentioned, I will expand upon that point latter in this memo. You will also notice that three (3) accounts that were in the old Cal Comp captive arrangement were moved/renewed into the Frontier program. This was done in compliance with your desires and our commitment following our initial audit, and program negotiations.

Prior to the July push, Dwight Halvorson Insurance Agency hired a new producer Chuck Hughes. Chuck introduced Dwight to a San Francisco Agent, Don Tarantino who specializes in the food industry in the Bay Area. He had written or had access to some of the best known accounts in the industry. Don has worked out an arrangement with Dwight to broker business through DHIS.

Did Dwight have
conversation w/
Kevin?

Dwight also made similar agreements (appointing them as sub-brokers) with Dodge, Warren & Peters – a large regional brokerage firm that has substantial volume in the Food Industry in Southern California- and VCAA (Ventura County Ag Association). VCAA is a Southern California Association that has hired two brokers, a loss control professional and lawyer to handle/negotiate their insurance. Members of the association deal solely in the Agricultural Industry and represented a huge block of both July and January business that they desired to move to FSIM.

With Tarantino and Dodge, Warren & Peters we were able to deal with individual accounts as they were submitted. But...with VCAA we had to deal with a block of business. In order to keep the endorsement of the association we had to find a way to write all existing members. PAULA had been the endorsed carrier, but lost that

/
do they all meet underwriting criteria?!

designation to FSIM. To complicate matters, one of the producers at VCAA left another agency and many of his records were purged or kept by that brokerage firm which then competed against him (and us) to obtain the business. It took substantial effort to collect the information, and some cases (very limited) we had to proceed with less information than we normally get.

Another unique feature of the VCAA book, is that there is a lot of accounts which fell below our \$50,000 minimum. Some were associated with larger accounts which were being quoted or come up in Jan. Others were just part of the group. Our solution was to split the VCAA business into two distinct groups. One being for the "small" accounts the other being for "Big" accounts. In each group our minimum collective premium threshold was \$500,000.

To facilitate a true "breakdown" in VCAA business we ask that you set up two separate cells. The first could be called VCAA "Small" Group, and will be comprised (initially, we plan to add additional accounts to the group) of the accounts listed in exhibit #2. The second cell would be called VCAA "BIG" Group, and will be comprised, initially, by the accounts listed in exhibit #3. We anticipate that each "cell" will be in excess of \$2 Million by Feb. 1999.

Exhibit #4 shows the combined totals for VCAA's "Small" and "BIG" groups.

As indicated in Exhibit #1, July was an outstanding production month. We were able to add \$2,847,977 to the total FSIM/Frontier program. This despite a very tough marketplace. Along with the traditional competition, Superior National (fresh from their announcement of their purchase of Cal Comp.) has been extremely competitive. Allistar, Paula, and Liberty Mutual rounded out the stiff competition.

With the July success, our total EAP with Frontier equals \$5,893,094, as of July 1, 1998! Exhibit #5, "FSIM/FRONTIER ISSUANCE LOG", lists all accounts in the program as of July 1, 1998 with EAP, Policy #, Ex.Mod., Credit, and Gov. Class.

As you go through the accounts you will notice that there were several violations of our granted authority. They stem from the competitive environment, the necessity to make business decisions, the late publication of experience modifications, and necessity to make accommodations to capture a large block of business. [Throughout the underwriting process, I kept a focus on the "overall" balance of the book. Most of the Exhibits attached to this cover show both individual Credit allocation and cumulative totals.

Kevin to
address

In regards to the Experience Modification situation, please note that many accounts were quoted and presented using 1997 Experience Modifications. When the 1998 Xmod was published we didn't have time to notify you, and in several instances had the order before the new mod was published. We are attempting to correct this situation, and have gone "on line" with the "net" to expedite the process of obtaining Xmods. Still, major quarters in California, have historically seen slow promulgation by the WCIRB.

How do we
address?

Please note that those accounts with Mods over 1.25, have shown positive trends in both Frequency and Severity reduction. In most instances we sense that the Mods will be on the way down, once positive years are fully incorporated into the Mod calculation.

In regards to credits, although on several occasions I exceeded the authority (45% max), it was done to capture an exceptional account, or in regards to the groups, attempting to keep the "block" together. It was also done with the focus upon selling some with a lower credit and keeping the overall average reasonable.

As I have stated in previous memos and letters, the competitive environment in California has seen most carriers using anywhere from 46 to 48% average credits (this before Premium Discount). Our efforts in July – as illustrated in Exhibit #6 – show a total average discount of 39.7%! Exhibit #7 shows that FSIM's average credit allocation for all business currently in the Frontier program (as of 7/1/98) is 39.06! Other exhibits show average credit allocations that fall below the industry average;

Exhibit #2 VCAA "Small" Group = 32.7% Average Credit Allocation
Exhibit #3 VCAA "Big" Group = 36.8% Average Credit Allocation
Exhibit #4 VCAA Total Business = 34.5% Average Credit Allocation

Clearly, were we can sell less credit (or even a debit) we will. But the ferocity of the market place had dictated that to be successful on desirable, outstanding accounts, we need to exceed 45% credits from time to time. In July, we were not given much notice by the buyer and had to adjust original quotes to "come closer", not necessarily beat the competition price wise.

I hope the information provided above and file information provided makes sense. If you have any questions please do not hesitate to call. I'll be updating you shortly on some of the accounts written following 7/1/98. And I hope to hear from you regarding the two separate cells (VCAA Small & BIG).

Again, please excuse the delay in getting all this to you. Thank you for your help, understanding and faith in our program.

A handwritten signature, likely of the sender, located at the bottom right of the page.

not w/o
approval

FSIM
July '98 Quote/Issue

<u>Account</u>			<u>Issued</u>	
<u>Name</u>	<u>E.A.P.</u>	<u>Status</u>	<u>@</u>	<u>Notes</u>
Alioto Fish Company	\$ 58,994	Lost	\$ -	Sub-Producer Tarantino
Apple Packing	\$ 62,445	Lost	\$ -	Wise
B.J. Harvesting	\$ 89,792	Issued	\$ 89,792	VCAA
BHG Ventures	\$ 23,775	Lost	\$ -	Sub-Producer Tarantino
Bien Nacido Vineyards	\$ 64,926	Issued	\$ 64,926	VCAA
Bob Jones Ranch	\$ 1,914	Issued	\$ 1,914	VCAA
Boskovich Farms	\$ 520,142	Lost	\$ -	VCAA
Casper Berry Farms	\$ 56,186	Issued	\$ 56,186	VCAA
Central Coast Packing	\$ 183,725	Lost	\$ -	Wise
Channel Island Berry	\$ 67,932	Issued	\$ 67,932	VCAA
Chualar Labor	\$ 270,495	Lost	\$ -	
Clinton's Restaurant	\$ 64,102	Lost	\$ -	Dodge Warren Peters
Conroy Berry Farms	\$ 45,454	Issued	\$ 45,454	VCAA
Country Gold Farm	\$ 148,085	Issued	\$ 148,085	VCAA
D & V Harvesting	\$ 67,719	Issued	\$ 67,719	VCAA
Desert Packing	\$ 187,733	Issued	\$ 187,733	from Cal Comp Program
E & L Avila	\$ 108,000	Lost	\$ -	Wise
Emerald Produce	\$ 126,200	Lost	\$ -	from Cal Comp Program
Ferrari-Carano Winery	\$ 110,854	Lost	\$ -	Jackson
Fino Ristorante	\$ 14,749	Lost	\$ -	Sub-Producer Tarantino
Fukutomi Farms	\$ 51,141	Issued	\$ 51,141	VCAA
Fulfillment Systems	\$ 107,912	Issued	\$ 107,912	Sub-Producer Tarantino
Garcia Farming	\$ 86,404	Lost	\$ -	
Hall Ag. Ent.	\$ 373,051	Lost	\$ -	Wise
Hasegawa Farms	\$ 32,319	Issued	\$ 32,319	VCAA
Hiji Brothers	\$ 277,548	Issued	\$ 277,548	VCAA
J.A. Contracting	\$ 147,700	Lost	\$ -	
Jamba Juice	\$ 299,974	Lost	\$ -	Dodge Warren Peters
La Pizza Loca	\$ 103,730	Lost	\$ -	Dodge Warren Peters
Lardas Systems	\$ 41,000	Lost	\$ -	Dodge Warren Peters
Luna Fertilizer	\$ 18,665	Issued	\$ 18,665	VCAA
M. Nishimori Farms	\$ 88,346	Issued	\$ 88,346	VCAA
Martinez Farms	\$ 44,583	Issued	\$ 44,583	VCAA
Mollie Stone's Market	\$ 166,898	Lost	\$ -	Sub-Producer Tarantino
Moss Beach Distillery	\$ 53,440	Lost	\$ -	Sub-Producer Tarantino
Mt. Peoples Warehouse	\$ 474,078	Lost	\$ -	

July '98 Quote/Issue

[illegible]

FSIM/FRONTIER**CREDIT ALLOCATION 7/1/98 BUSINESS**

Account	Effec.	Gov.	Prem.	Prem.	%
Name	Date	Class	after	after	Credits
Country Gold Farm	7/1/98	0016	\$ 297,126	\$ 164,905	44%
Martinez Farms	7/1/98	0079	\$ 64,967	\$ 48,725	25%
Bien Nacido Vineyards	7/1/98	0040	\$ 83,754	\$ 71,191	15%
M. Nishimori Farms	7/1/98	0172	\$ 134,838	\$ 97,083	28%
B.J. Harvesting	7/1/98	0016	\$ 176,200	\$ 98,200	44%
Luna Fertilizer	7/1/98	0050	\$ 29,547	\$ 20,092	32%
Fukutomi Farms	7/1/98	0079	\$ 65,899	\$ 56,014	15%
Santa Clara Farms	7/1/98	0016	\$ 148,599	\$ 74,300	50%
D & V Harvesting	7/1/98	0016	\$ 148,670	\$ 74,335	50%
Casper Berry Farms	7/1/98	0079	\$ 78,897	\$ 61,540	22%
Hasegawa Farms	7/1/98	0079	\$ 59,607	\$ 35,168	41%
Philip McGrath Farms	7/1/98	0079	\$ 10,017	\$ 8,514	15%
Conroy Berry Farms	7/1/98	0079	\$ 65,360	\$ 49,677	24%
Channel Island Berry	7/1/98	0079	\$ 82,854	\$ 74,569	10%
Yamamoto Farms	7/1/98	0005	\$ 8,391	\$ 7,552	10%
Bob Jones Ranch	7/1/98	8810	\$ 1,914	\$ 1,914	0%
Rancho Guadalupe	7/1/98	0016	\$ 49,798	\$ 69,717	-40%
TOTALS			\$ 1,506,438	\$ 1,013,496	32.7%

"VCAA "Small" Group"

Exhibit # 2

FSIM/FRONTIER

CREDIT ALLOCATION 7/1/98 Business

[illegible]

VCAA "BIG" Group

$$3x^2 + 9x + 3$$

FSIM/Frontier
CREDIT ALLOCATION 7/1/98 Business

<u>Account</u>	<u>Effec.</u>	<u>Gov.</u>	<u>Prem.</u>	<u>Prem.</u>	<u>%</u>
<u>Name</u>	<u>Date</u>	<u>Class</u>	<u>after</u>	<u>after</u>	<u>Credits</u>
Country Gold Farm	7/1/98	0016	\$ 297,126	\$ 164,905	44%
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B.J. Harvesting	7/1/98	0016	\$ 176,200	\$ 98,200	44%
Luna Fertilizer	7/1/98	0050	\$ 29,547	\$ 20,092	32%
Fukutomi Farms	7/1/98	0079	\$ 65,899	\$ 56,014	15%
Santa Clara Farms	7/1/98	0016	\$ 148,599	\$ 74,300	50%
D & V Harvesting	7/1/98	0016	\$ 148,670	\$ 74,335	50%
Casper Berry Farms	7/1/98	0079	\$ 78,897	\$ 61,540	22%
Hasegawa Farms	7/1/98	0079	\$ 59,607	\$ 35,168	41%
Philip McGrath Farms	7/1/98	0079	\$ 10,017	\$ 8,514	15%
Conroy Berry Farms	7/1/98	0079	\$ 65,360	\$ 49,677	24%
Channel Island Berry	7/1/98	0079	\$ 82,854	\$ 74,569	10%
Valle Dorado Ag.	7/1/98	0040	\$ 410,754	\$ 217,700	47%
Pacifico Berry Farms	7/1/98	0079	\$ 311,162	\$ 192,920	38%
Hiji Brothers, Inc.	7/1/98	0172	\$ 421,416	\$ 311,848	26%
Yamamoto Farms	7/1/98	0005	\$ 8,391	\$ 7,552	10%
Bob Jones Ranch	7/1/98	8810	\$ 1,914	\$ 1,914	0%
Rancho Guadaluca	7/1/98	0016	\$ 49,798	\$ 69,717	-40%
TOTALS			\$ 2,649,770	\$ 1,735,964	34.5%

VCAA Total Business

Exhibit 24

1

F.S.I.M./FRONTIER ISSUANCE LOG

<u>Account</u>	<u>Effec.</u>	<u>New</u>	<u>E.A.P.</u>	<u>Policy #</u>	<u>Ex.Mod.</u>	<u>Credit</u>	<u>Gov.</u>
<u>Name</u>	<u>Date</u>	<u>Renewal</u>				<u>(Debit)</u>	<u>Class</u>
Luna Fertilizer	7/1/98	N	\$ 18,665	WC 38888	1	32%	0050
Fukutomi Farms	7/1/98	N	\$ 51,141	WC 38886	0.85	15%	0079
D & V Harvesting	7/1/98	N	\$ 67,719	WC 38881	1	50%	0016
Casper Berry Farms	7/1/98	N	\$ 56,186	WC 38882	1.02	22%	0079
Hasegawa Farms	7/1/98	N	\$ 32,319	WC 38874	1	41%	0079
Philip McGrath Farms	7/1/98	N	\$ 8,182	WC 38875	1	15%	0079
Conroy Berry Farms	7/1/98	N	\$ 45,454	WC 38877	0.73	24%	0079
Valley Dorado Ag	7/1/98	N	\$ 194,624	WC 38893	0.87	47%	0040
Pacifico Berry Farms	7/1/98	N	\$ 172,856	WC 38879	1.71	38%	0079
Hiji Brothers, Inc.	7/1/98	N	\$ 277,578	WC 38890	0.89	26%	0172
Santa Clara Farms	7/1/98	N	\$ 67,687	WC 38887	1	50%	0016
Channel Island Berry	7/1/98	N	\$ 67,932	WC 38878	0.99	10%	0079
Fulfillment Systems	7/1/98	N	\$ 107,912	WC 38869	0.95	50%	9079
Yamamoto Farms	7/1/98	N	\$ 7,317	WC 38898	1.09	10%	0005
Bob Jones Ranch	7/1/98	N	\$ 1,914	WC 38897	1	0%	8810
Rancho Guadaluasca	7/1/98	N	\$ 63,582	WC 38895	0.9	-40%	0016
TOTALS			\$ 5,893,094			39.06%	

+ +

+

FSIM/Frontier**CREDIT ALLOCATION 7/1/98 Business**

Account	Effec.	Gov.	Prem.	Prem.	%
Name	Date	Class	Xmod	after Credits	Credits
Desert Packing	7/1/98	0172	\$ 381,377	\$ 209,757	45%
Growers Company	7/1/98	0172	\$ 355,332	\$ 177,666	50%
Sunsweet Dryers	7/1/98	2102	\$ 266,128	\$ 149,032	44%
Natural Selection (CA)	7/1/98	0172	\$ 532,546	\$ 292,900	45%
Swiss Louis Rest.	7/1/98	9079	\$ 53,921	\$ 29,117	46%
Spengers	7/1/98	9079	\$ 226,355	\$ 124,495	45%
Fulfillment Systems	7/1/98	9079	\$ 238,480	\$ 119,240	50%
Country Gold Farm	7/1/98	0016	\$ 297,126	\$ 164,905	44%
Martinez Farms	7/1/98	0079	\$ 64,967	\$ 48,725	25%
Bien Nacido Vineyards	7/1/98	0040	\$ 83,754	\$ 71,191	15%
M. Nishimori Farms	7/1/98	0172	\$ 134,838	\$ 97,083	28%
B.J. Harvesting	7/1/98	0016	\$ 176,200	\$ 98,200	44%
Luna Fertilizer	7/1/98	0050	\$ 29,547	\$ 20,092	32%
Fukutomi Farms	7/1/98	0079	\$ 65,899	\$ 56,014	15%
Santa Clara Farms	7/1/98	0016	\$ 148,599	\$ 74,300	50%
D & V Harvesting	7/1/98	0016	\$ 148,670	\$ 74,335	50%
Casper Berry Farms	7/1/98	0079	\$ 78,897	\$ 61,540	22%
Hasegawa Farms	7/1/98	0079	\$ 59,607	\$ 35,168	41%
Philip McGrath Farms	7/1/98	0079	\$ 10,017	\$ 8,514	15%
Conroy Berry Farms	7/1/98	0079	\$ 65,360	\$ 49,677	24%
Channel Island Berry	7/1/98	0079	\$ 82,854	\$ 74,569	10%
Valle Dorado Ag.	7/1/98	0040	\$ 410,754	\$ 217,700	47%
Pacifico Berry Farms	7/1/98	0079	\$ 311,162	\$ 192,920	38%
Hiji Brothers, Inc.	7/1/98	0172	\$ 421,416	\$ 311,848	26%
Yamamoto Farms	7/1/98	0005	\$ 8,391	\$ 7,552	10%

2xh,b,t 86

CREDIT ALLOCATION 7/1/98 Business

[illegible]

FSIM/FRONTIER**CREDIT ALLOCATION Total Business**

Account	Effec.	Gov.	Prem.	Prem.	%
Name	Date	Class	after	after	Credits
Holiday Quality Food	5/1/98	8006	\$ 677,179	\$ 413,079	39%
Holiday Ranches	5/1/98	0038	\$ 50,685	\$ 28,384	44%
North State Grocery	5/1/98	8006	\$ 1,265,688	\$ 759,413	40%
Cal West Farming	5/1/98	0172	\$ 880,268	\$ 563,372	36%
Organic Food Prod.	5/1/98	6504	\$ 94,455	\$ 67,063	29%
SK Foods	5/1/98	2111	\$ 275,880	\$ 146,216	47%
La Tapatia	3/31/98	2003	\$ 224,552	\$ 121,258	46%
V & L Farms	1/3/98	0079	\$ 172,993	\$ 86,497	50%
Sierra Citrus Assoc.	1/1/98	2108	\$ 212,023	\$ 125,094	41%
Geo. Perry & Sons	1/1/98	0172	\$ 159,528	\$ 86,145	46%
Nature Quality	1/1/98	6504	\$ 132,817	\$ 78,362	41%
Growers Transport	1/1/98	7219	\$ 115,797	\$ 59,056	49%
Coachella Valley Citru	1/1/98	0016	\$ 738,265	\$ 553,699	25%
Dunlap Management	1/1/98	0016	\$ 81,853	\$ 41,745	49%
Producers Dairy	1/1/98	2063	\$ 391,952	\$ 235,171	40%
Desert Packing	7/1/98	0172	\$ 381,377	\$ 209,757	45%
Growers Company	7/1/98	0172	\$ 355,332	\$ 177,666	50%
Sunsweet Dryers	7/1/98	2102	\$ 266,128	\$ 149,032	44%
Natural Selection (CA)	7/1/98	0172	\$ 532,546	\$ 292,900	45%
Swiss Louis Rest.	7/1/98	9079	\$ 53,921	\$ 29,117	46%
Spengers	7/1/98	9079	\$ 226,355	\$ 124,495	45%
Fulfillment Systems	7/1/98	9079	\$ 238,480	\$ 119,240	50%
Country Gold Farm	7/1/98	0016	\$ 297,126	\$ 164,905	44%
Martinez Farms	7/1/98	0079	\$ 64,967	\$ 48,725	25%
Bien Nacido Vineyards	7/1/98	0040	\$ 83,754	\$ 71,191	15%
M. Nishimori Farms	7/1/98	0172	\$ 134,838	\$ 97,083	28%
B.J. Harvesting	7/1/98	0016	\$ 176,200	\$ 98,200	44%

Exhibit 87

CREDIT ALLOCATION Total Business

<u>Account</u>	<u>Effec.</u>	<u>Gov.</u>	<u>Prem.</u>	<u>Prem.</u>	<u>%</u>
<u>Name</u>	<u>Date</u>	<u>Class</u>	<u>after</u> <u>Xmod</u>	<u>after</u> <u>Credits</u>	<u>Credits</u> <u>%</u>
Luna Fertilizer	7/1/98	0050	\$ 29,547	\$ 20,092	32%
Fukutomi Farms	7/1/98	0079	\$ 65,899	\$ 56,014	15%
Santa Clara Farms	7/1/98	0016	\$ 148,599	\$ 74,300	50%
D & V Harvesting	7/1/98	0016	\$ 148,670	\$ 74,335	50%
Casper Berry Farms	7/1/98	0079	\$ 78,897	\$ 61,540	22%
Hasegawa Farms	7/1/98	0079	\$ 59,607	\$ 35,168	41%
Philip McGrath Farms	7/1/98	0079	\$ 10,017	\$ 8,514	15%
Conroy Berry Farms	7/1/98	0079	\$ 65,360	\$ 49,677	24%
Channel Island Berry	7/1/98	0079	\$ 82,854	\$ 74,569	10%
Valle Dorado Ag.	7/1/98	0040	\$ 410,754	\$ 217,700	47%
Pacifico Berry Farms	7/1/98	0079	\$ 311,162	\$ 192,920	38%
Hiji Brothers, Inc.	7/1/98	0172	\$ 421,416	\$ 311,848	26%
Yamamoto Farms	7/1/98	0005	\$ 8,391	\$ 7,552	10%
Bob Jones Ranch	7/1/98	8810	\$ 1,914	\$ 1,914	0%
Rancho Guadaluco	7/1/98	0016	\$ 49,798	\$ 69,717	-40%
TOTALS			\$ 10,177,844	\$ 6,202,725	39.06%

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F.S.I.M.
FOOD SERVICES INSURANCE MANAGERS, INC.

==MEMORANDUM==

TO : Janet Backer
FROM : George Hagosian
DATE : October 15, 1998
SUBJECT : *Land Transportation Reinsurance for FSIM Program*

Sorry for the delay in getting this to you, but ,as always, prior and post "10/1" has been hectic.

In any case, as a follow-up/written confirmation of our September discussions regarding "Land Transportation Reinsurance" we have chosen option two of the four options provided in Sue Cole's memo of September 16, 1998. This option was structured as follows,

- *Limits/Coverage* **\$7,500,000 x/s \$500,000**
- *Contact Period* **TBA**
- *ReIns. Placement* **100%**
- *ReIns. Rate(s)* **Per Vehicle/Per Seat**
 - Non Seated* : \$ ~~43.94~~
 - 5 - 15 Seats* : \$ **5.15**
 - 16-25 Seats* : \$ 58.57
 - 25+ Seats* : \$117.16
- *Max Any 1 Life* **\$1,000,000**

Typo - should be \$5.15

In addition this is written confirmation of my verbal suggestion for underwriting criteria via MVRs for the program,

Good recommendation

- **No Major (Reckless Driving, DUI) Violation in last 36 months**
- **No Suspensions or Revocation of License in last 36 months**
- **No Driver shall have 3 moving violations or 2 at fault accidents in last 36 months.**
- **No Driver shall have 2 moving violations or 1 fault accident in the last 24 months.**

Thank you for all your assistance in creating this.

Cc: Dwight Halvorson



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for new and renewal business → possible solution.

F.S.I.M./FRONTIER PROGRAM
"Wish List"

Requested/Suggested Program Alterations For Renewal of Contract

1. **Maintain current competitiveness on base rates.** If California Pure Premium rates increase, file for reduction in loss cost multiplier. Conversely, should California Pure Premium rates decrease, file for increase in loss cost multiplier. In either case the net result should be to maintain consistency in "gross rates" 1998 vs. 1999. No

- to write cream of the business. → 2. **File for increase in schedule credit/debit to 60%.** This would be more consistent with filings by our competitors. It would also allow us to close "the gap" between us and the Direct Writers (Farmers, Liberty Mutual, the State Fund) who have become extremely competitive on profitable accounts. Perhaps will consider

3. **Expand credit application authority as follows,**

~~80%~~ ^{45%} A maximum of ~~80%~~ ^{45%} schedule credit may be applied to risks in the State of California with standard premium ranging from \$2,000 to \$49,999. Prefer stay as is

^{45%} A maximum of ~~55%~~ ^{45%} schedule credit may be applied to risks in the State of California with standard premium ranging from \$50,000 to \$999,999. No

A maximum of 50% schedule credit may be applied to risks in the State of California with standard premium of \$1,000,000 or more. ✓

Additional credits may be request through referral of account to Frontier Underwriter.

- * yearly averages to ~~80%~~ ^{40%}? ← need to add wording. OK
4. **Lower minimum premium to \$2,000:** This is necessitated to support some of the Groups we have an opportunity to assemble. This is also necessitated in situations where larger accounts have relationships (interest) in smaller accounts and must be written in conjunction with the larger in order to secure order.

- ^{25%} ^{40%} 5. **Allow the inclusion of risks with less than three years of operation into the program provided they have had prior experience in either an ownership or management capacity, in the same type of operation, for a period of five (5) years or more.** OK
Distinction here being, new business vs. new venture.

- ^{not experience mod → losses etc} 6. **Expand underwriting authority to include risks with Experience Modifications in excess of 1.26 provided that their recent trending (current plus prior year) for both frequency and severity is positive (downward trend).** In addition, FSIM RQA should reflect Senior Management commitment, safety enhancement, significant operational modifications and/or elimination of hazards. George relies on losses as indicator, not exp. mod

check
LC

7. *In instances where Experience Modification is in excess of 1.26 and recent trending is "flat" or negative (upward trend), and FSIM has reason or rational to entertain quotation, risk will be submitted to Frontier for special consideration. No such risk will be bound without prior written approval by Frontier.*

yes

8. *Grant four (4) additional points to Management Fee. Allowance without increase to LOC requirement*

LC, Advised that this may not be possible. point of discussion for Dick/Devin.

Volume Status and Projection for Year End 1999

Current Frontier Volume: approximately \$8,000,000.

Production goal 1/1/99: \$5,000,000. of new business

Production goal for 7/1/99: \$7,000,000.

Production goal for 7/2/99:12/31/99: \$5,000,000.

Production goal for 1/1/00: \$10,000,000.

Total projected growth through 1/1/00- \$35,000,000.

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F.S.I.M.
FOOD SERVICES INSURANCE MANAGERS, INC.

==MEMORANDUM==

TO : Janet Backer
FROM : George Hagopian
DATE : November 13, 1998
SUBJECT : *Program Renewal Data*

NOV 16 1998

Fed Ex

Per your October 8, 1998 memo, the information you requested is attached. In addition I have also included an updated *FSIM/Frontier Issuance Log*. A copy of the Issuance Log was also sent to Allison Wingerter (I'll continue to send you and her an updated version on a monthly basis).

This cover and "spread sheets" are being faxed. A "hard copy" of memo and spread sheets, along with copies of payroll history on each account will be overnighted to your attention (you should receive them Monday).

The projected/estimated payroll broken down by WC Classification codes, is just that ESTIMATED. As indicated by the Issuance Log our current EAP in the program is in excess of \$8 million. We intend (and have projected and planed for) growth in 1999 to total ~~\$25,000,000 EAP~~.

What I have done to estimate the '99 payrolls is to project a high renewal persistency and figure modest payroll growth for those renewals. Then in classes where we anticipate the greatest opportunity for growth, I have increased the percentage of payroll increase. For instance Classification 0040 Vineyards projects a 28% increase, Classification 8209 Fresh Vegetable Packing projects a 20% increase over 1998 payroll in the class. Other classes such as 6504 Confections, Food Mfg reflect modest (2%) increase, most likely added to policies as incidental operations.

Several classes, not included in prior years were added and have had payroll projections listed in anticipation that these types of accounts are added to the book's mix. (Note, From Breweries 2121 down).

As regards large loss data, information on that has been provided in our submissions to you. Should you need additional copies I can get it for your, but, I'll have to go through our files and make copies. Didn't want to hold this up any longer.

Once again, sorry for the delay in getting this to you, but I wanted it to be accurate and precise. If you have any questions, please do not hesitate to call.

Cc : Dwight Halvorson

*New notes:
S. E. Green
sc*

George

F.S.I.M./FRONTIER ISSUANCE LOG

Account	Effect.	New	E.A.P.	Policy #	Ex.Mod.	Credit	Gov.
Name	Date	Renewal				(Debit)	Class
Coachella Valley Citrus	1/1/98	N	\$ 490,577	W205000106	1.82	25%	0016
Dunlap Management	1/1/98	N	\$ 38,238	W205000107	1.59	49%	0016
Growers Transport	1/1/98	N	\$ 53,918	W205000108	1.72	49%	7219
Producer's Dairy	1/1/98	N	\$ 210,008	W205000109	1.16	40%	2063
Bar 20 Dairy	1/1/98	N	\$ 45,336	W205000125	1.16	45%	0036
Sierra Citrus Assoc.	1/1/98	N	\$ 113,085	W205000110	1.13	41%	2108
V & L Farms	1/3/98	N	\$ 78,712	W205000111	0.76	50%	0079
George Perry & Sons	1/1/98	N	\$ 78,478	W205000112	1.24	46%	0172
Nature Quality	1/1/98	N	\$ 71,388	W205000113	1.47	41%	6504
La Tapatia Tortilleria	3/31/98	N	\$ 109,738	W205000114	1.64	46%	2003
Holiday Quality Foods	4/1/98	N	\$ 366,814	W205000115	1.99	39%	8006
North State Grocery	4/1/98	N	\$ 670,562	W205000116	1.91	40%	8006
Holiday Ranches	4/1/98	N	\$ 26,170	W205000117	1.99	44%	0038
Organic Food Products	5/1/98	N	\$ 61,161	W205000118	0.81	29%	6504
SK Foods	5/1/98	N	\$ 131,741	W205000119	1	47%	2111
Cal West Farming	5/1/98	N	\$ 499,148	W205000120	1.57	36%	0172
Desert Packing	7/1/98	N	\$ 187,733	W205000121	1.53	45%	0172
The Growers Company	7/1/98	N	\$ 395,619	W205000122	0.73	50%	0172
Sunsweet Dryers	7/1/98	N	\$ 134,129	W205000123	1.77	44%	2102
Natural Selection Foods	7/1/98	N	\$ 314,379	W205000124	1.19	45%	0172
Swiss Louis Restaurant	7/1/98	N	\$ 26,817	W205000126	0.89	46%	9079
Spengers	7/1/98	N	\$ 112,543	W205000127	1.78	45%	9079
Country Gold Farm	7/1/98	N	\$ 148,085	W205000128	1	44%	0016
Martinez Farms	7/1/98	N	\$ 44,583	W205000129	1.21	25%	0079
Bien Nacido Vineyards	7/1/98	N	\$ 64,926	W205000130	0.99	15%	0040
M. Nishimori Farms	7/1/98	N	\$ 88,346	W205000131	0.91	28%	0172
B.J. Harvesting	7/1/98	N	\$ 89,792	W205000132	0.89	44%	0016

F.S.I.M./FRONTIER ISSUANCE LOG

<u>Account</u> <u>Name</u>	<u>Effec.</u> <u>Date</u>	<u>New</u> <u>Renewal</u>	<u>E.A.P.</u>	<u>Policy #</u>	<u>Ex.Mod.</u>	<u>Credit</u> <u>(Debit)</u>	<u>Gov.</u> <u>Class</u>
Luna Fertilizer	7/1/98	N	\$ 18,665	W205000133	1	32%	0050
Fukutomi Farms	7/1/98	N	\$ 51,141	W205000134	0.85	15%	0079
D & V Harvesting	7/1/98	N	\$ 108,380	W205000135	1.61	50%	0016
Casper Berry Farms	7/1/98	N	\$ 56,186	W205000136	1.02	22%	0079
Hasegawa Farms	7/1/98	N	\$ 32,319	W205000137	1	41%	0079
Philip McGrath Farms	7/1/98	N	\$ 8,182	W205000138	1	15%	0079
Conroy Berry Farms	7/1/98	N	\$ 45,454	W205000139	0.73	24%	0079
Valley Dorado Ag	7/1/98	N	\$ 194,624	W205000140	0.87	47%	0040
Pacifico Berry Farms	7/1/98	N	\$ 172,856	W205000141	1.71	38%	0079
Hiji Brothers, Inc.	7/1/98	N	\$ 277,578	W205000142	0.89	26%	0172
Santa Clara Farms	7/1/98	N	\$ 67,687	W205000143	1	50%	0016
Channel Island Berry	7/1/98	N	\$ 67,932	W205000144	0.99	10%	0079
Fulfillment Systems	7/1/98	N	\$ 107,912	W205000145	0.95	50%	9079
Yamamoto Farms	7/1/98	N	\$ 7,317	W205000146	1.09	10%	0005
Bob Jones Ranch	7/1/98	N	\$ 1,914	W205000147	1	0%	8810
Rancho Guadaluca	7/1/98	N	\$ 63,582	W205000148	0.9	-40%	0016
Goldberg & Solovy	8/1/98	N	\$ 119,940	W205000155	0.87	47%	8018
Poplar Farms	8/1/98	N	\$ 109,685	W205000157	1.17	45%	79
Eclipse Berry Farms	8/1/98	N	\$ 172,000	W205000156	1.63	48%	79
Rio Mesa Farms	8/1/98	N	\$ 119,738	W205000158	1.28	45%	79
Odwalla	9/1/98	N	\$ 566,360	W205000149	1.84	15%	2163
Coronet Foods, Inc	9/1/98	N	\$ 84,253	W205000151	1.52	47%	6504
KGM Harvesting	9/1/98	N	\$ 64,105	W205000152	1.52	47%	0172
Gudpak	9/30/98	N	\$ 166,400	W205000159	0.94	40%	0172
Cal West Farming	9/18/98	R	\$ 695,492	W205000160	1.87	43%	0172
Athens Baking	10/1/98	N	\$ 47,574	W205000154	0.93	50%	2003

F.S.I.M./FRONTIER Classification/Payroll 1999 Projected/Estimated

<u>Classification</u>	<u>Code</u>	<u>Payroll</u> <u>Est. 1999</u>
Truck Farms	0172	\$ 40,413,723
Strawberry Crops	0079	\$ 28,079,787
Salesmen	8742	\$ 6,486,252
Orchards-Citrus	0016	\$ 10,338,514
Fruit Packing	2108	\$ 3,023,540
Confections, Food Mfg.	6504	\$ 6,533,193
Vineyards	0040	\$ 3,113,889
Stores Retail NOC	8017	\$ 1,222,100
Bakeries	2003	\$ 6,170,136
Restaurants	9079	\$ 7,661,325
Stores-Deil-Retail	8006	\$ 15,078,862
Stores-Meat, Fish	8031	\$ 2,895,571
Nurseries	0005	\$ 608,163
Feed Yards	0038	\$ 274,080
Fresh Veg. Packing	8209	\$ 5,100,000
Clerical	8810	\$ 16,557,474
Strawberry Crops	0072	\$ -
Farm Machinery	0050	\$ 326,316
Fruit, Veg Dehydrating	2102	\$ 4,000,000
Stores-Meat, Fish	8021	\$ 829,787
Bottling-Beverages	2163	\$ 5,019,391
Fruit, Juice Concentrate	2116	\$ 1,882,473
Meat Products Mfg.	2095	\$ 1,201,105
Canneries-Fruit	2111	\$ 3,102,500
Analytical Labs	4511	\$ -

Jan '98 Loss Cost
1.134 mult

3063,360
1757,795
53,836
1032,479
245,511
454,710
175,623
50,595
386,251
366,977
1144,896
210,508
34,422
44,812
477,750
117,558
-
30,608
200,000
99,243
287,109
136,668
74,348
255,336
-

0.000102

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16	5	7	4	7	4	.	+	.	+						
20	0	0	0	0						
		9	9	2	4	3	.	.	+						
		2	8	7	1	0	9	.	+						
		1	3	6	6	6	8	.	+						
			7	4	3	4	8	.	+						
		2	5	5	3	3	6	.	+						
				5	9	0	3	.	+						
			2	0	0	5	6	.	+						
				6	3	5	6	.	+						
			2	0	6	0	0	.	+						
			3	8	9	5	1	8	.	+					
				7	2	7	5	0	.	+					
				4	9	6	8	0	.	+					
				1	0	3	9	0	.	+					
				2	3	1	3	0	.	+					
				3	1	8	0	0	.	+					
					1	8	2	7	5	0	.	+			
						1	5	3	2	5	0	.	+		
						1	2	0	8	1	0	6	6	.	*

[illegible]

1208, 1209

F.S.I.M./FRONTIER LOSS HISTORY

Account	Effec.	1998	1997	1996	1995	1994
Name	Date					
Coachella Valley Citrus	1/1/98	\$ 370,699	\$ 137,781	\$ 455,316	\$ 717,869	
Dunlap Management	1/1/98	\$ 141	\$ 5,280	\$ 7,837	\$ 74,591	
Growers Transport	1/1/98	\$ 2,935	\$ -	\$ 2,410	\$ 240,076	
Producer's Dairy	1/1/98	\$ 152,633	\$ 24,500	\$ 182,496	\$ 315,200	
Sierra Citrus Assoc.	1/1/98	\$ 130,027	\$ 12,318	\$ 81,949	\$ 155,820	\$ 23,334
V & L Farms	1/3/98	\$ 3,850	\$ 32,339	\$ 66,564	\$ 3,140	
George Perry & Sons	1/1/98	\$ 26,206	\$ 24,374	\$ 119,442	\$ 29,903	\$ 53,164
Nature Quality	1/1/98	\$ 4,666	\$ 33,233	\$ 73,162	\$ 11,663	
La Tapatia Tortilleria	3/31/98	\$ 10,390	\$ 49,506	\$ 101,991	\$ 108,545	\$ 127,682
Holiday Quality Foods	4/1/98	\$ 20,385	\$ 67,222	\$ 84,665	\$ 124,067	\$ 335,419
North State Grocery	4/1/98	\$ 101,539	\$ 47,101	\$ 72,967	\$ 128,622	\$ 766,880
Holiday Ranches	4/1/98	\$ -	\$ 2,881	\$ 996	\$ 907	
Organic Food Products	5/1/98	\$ 12,963	\$ 1,372	\$ 1,593	\$ 2,052	
SK Foods	5/1/98	\$ 12,652	\$ 152,463	\$ 78,330	\$ 31,919	\$ 57,939
Desert Packing	7/1/98	\$ -	\$ 147,688	\$ 77,159	\$ 234,583	\$ 287,315
The Growers Company	7/1/98	\$ 23,092	\$ 97,597	\$ 76,026	\$ 51,835	
Sunsweet Dryers	7/1/98	\$ -	\$ 101,017	\$ 22,082	\$ 30,912	
Natural Selection Foods	7/1/98	\$ 34,959	\$ 109,227	\$ 201,157	\$ 1,046	
Swiss Louis Restaurant	7/1/98	\$ -	\$ 722	\$ 49,225	\$ 16,564	
Spengers	7/1/98	\$ 29,555	\$ 19,035	\$ 26,948	\$ 56,545	
Country Gold Farm	7/1/98	\$ 18,241				
Martinez Farms	7/1/98	\$ -	\$ -	\$ 6,223	\$ 2,883	
Bien Nacido Vineyards	7/1/98	\$ -	\$ 3,819	\$ 3,598	\$ 59,347	
M. Nishimori Farms	7/1/98	\$ 10,500	\$ 37,136	\$ 40,026	\$ 67,209	
B.J. Harvesting	7/1/98	\$ -	\$ -	\$ 10,776	\$ 54,871	

F.S.I.M./FRONTIER LOSS HISTORY

Account	Effec.	Policy Yr. 98	Policy Yr. 97	Policy Yr. 96	Policy Yr. 95	Policy Yr. 94
Name	Date					
Luna Fertilizer	7/1/98	\$ -	\$ -	\$ 17,039		
Fukutomi Farms	7/1/98	\$ -	\$ -	\$ 30,809	\$ 53,205	
D & V Harvesting	7/1/98	\$ 6,574	\$ 683	\$ 17,541		
Casper Berry Farms	7/1/98	\$ -	\$ 17,187	\$ 37,104	\$ 2,492	
Hasegawa Farms	7/1/98	\$ -	\$ 9,535	\$ 4,983	\$ 59,946	
Philip McGrath Farms	7/1/98	\$ -	\$ 292	\$ -	\$ 448	
Conroy Berry Farms	7/1/98	\$ -	\$ -	\$ 1,515	\$ 34,680	
Pacifico Berry Farms	7/1/98	\$ 3,135	\$ 4,458	\$ 46,857	\$ 74,611	
Hiji Brothers, Inc.	7/1/98	\$ 16,385	\$ 79,314	\$ 52,186	\$ 48,481	
Santa Clara Farms	7/1/98	\$ -	\$ 999			
Channel Island Berry	7/1/98	\$ -	\$ 68,722	\$ 6,712	\$ 19,360	\$ 55,667
Fulfillment Systems	7/1/98	\$ 26,540	\$ 16,364	\$ 24,887	\$ 103,285	
Yamamoto Farms	7/1/98	\$ -	\$ -	\$ -	\$ -	
Bob Jones Ranch	7/1/98	\$ -	\$ -	\$ -	\$ 9,110	
Rancho Guadaluca	7/1/98	\$ -	\$ 137,022	\$ 8,303	\$ 9,932	\$ 43,427
Goldberg & Solovy	8/1/98	\$ 5,844	\$ 107,201	\$ 32,393	\$ 316,605	\$ 31,709
Poplar Farms	8/1/98	\$ -	\$ 21,348	\$ 57,836		
Eclipse Berry Farms	8/1/98	\$ -	\$ 2,043	\$ 271,595	\$ 1,032	\$ 134,593
Rio Mesa Farms	8/1/98	\$ -	\$ 157,315	\$ 84,771		
Odwalla	9/1/98	\$ -	\$ 186,848	\$ 716,126	\$ 932,397	
Coronet Foods, Inc	9/1/98	\$ -	\$ 20,930	\$ 9,138	\$ 412,735	
KGM Harvesting	9/1/98	\$ -	\$ 41,973	\$ 785	\$ 99,983	
Gudpak	9/30/98	\$ -	\$ 9,689	\$ 71,209	\$ 71,855	\$ 101,467
Cal West Farming	9/18/98	\$ 67,772	\$ 148,598	\$ 376,823	\$ 510,889	\$ 250,383
Athens Baking	10/1/98	\$ -	\$ 54,338	\$ 43,091	\$ 26,138	

F.S.I.M./FRONTIER LOSS HISTORY

[illegible]

F.S.I.M./FRONTIER Classification/Payroll History

Classification	Code	Payroll 1998	Payroll 1997	Payroll 1996	Payroll 1995	Payroll 1994
Truck Farms	0172	\$ 37,988,900	\$ 30,827,900	\$ 30,711,778	\$ 24,744,429	\$ 23,072,688
Strawberry Crops	0079	\$ 26,395,000	\$ 20,756,283	\$ 16,199,926	\$ 14,617,450	\$ 11,302,223
Salesmen	8742	\$ 6,226,802	\$ 5,973,547	\$ 5,250,042	\$ 1,295,983	\$ 3,974,056
Orchards-Citrus	0016	\$ 9,097,892	\$ 5,261,783	\$ 4,814,566	\$ 2,903,493	\$ 2,923,057
Fruit Packing	2108	\$ 2,721,186	\$ 2,643,457	\$ 2,622,750	\$ 2,436,719	\$ 2,331,834
Confections, Food Mfg.	6504	\$ 6,402,529	\$ 6,759,595	\$ 5,558,776	\$ 3,806,852	\$ 3,051,209
Vineyards	0040	\$ 2,242,000	\$ 2,029,987	\$ 1,941,708	\$ 1,966,075	\$ 2,137,437
Stores Retail NOC	8017	\$ 1,197,658	\$ 1,103,730	\$ 1,080,671	\$ 821,835	\$ 910,884
Bakeries	2003	\$ 5,614,824	\$ 5,231,799	\$ 5,226,263	\$ 4,620,081	\$ 4,283,788
Restaurants	9079	\$ 6,971,806	\$ 6,911,749	\$ 6,524,392	\$ 5,945,838	\$ 5,620,117
Stores-Deil-Retail	8006	\$ 14,626,496	\$ 13,791,369	\$ 13,373,402	\$ 12,572,280	\$ 11,132,856
Stores-Meat, Fish	8031	\$ 2,837,660	\$ 2,772,928	\$ 2,661,797	\$ 2,578,265	\$ 2,204,584
Nurseries	0005	\$ 596,000	\$ 594,385	\$ 575,303	\$ 470,752	\$ 423,902
Feed Yards	0038	\$ 260,376	\$ 258,705	\$ 256,719	\$ 246,784	\$ 96,827
Fresh Veg. Packing	8209	\$ 4,080,000	\$ 2,174,702	\$ 1,887,925	\$ 1,210,878	\$ 756,817
Clerical	8810	\$ 15,895,175	\$ 14,967,517	\$ 13,373,894	\$ 12,623,955	\$ 9,707,671
Strawberry Crops	0072	\$ -	\$ -	\$ -	\$ 126,057	\$ 121,393
Farm Machinery	0050	\$ 310,000	\$ 309,765	\$ 295,987	\$ 295,679	\$ 285,887
Fruit, Veg Dehydrating	2102	\$ 3,000,000	\$ 3,200,000	\$ 3,017,600	\$ 2,933,409	\$ 2,842,767
Stores-Meat, Fish	8021	\$ 780,000	\$ 775,062	\$ 765,008	\$ 762,007	\$ 599,166
Bottling-Beverages	2163	\$ 4,417,064	\$ 4,272,656	\$ 4,181,452	\$ 4,175,723	\$ 3,168,879
Fruit, Juice Concentrate	2116	\$ 1,505,978	\$ 1,333,232	\$ 1,291,235	\$ 1,291,106	\$ 979,175
Meat Products Mfg.	2095	\$ 960,884	\$ 948,393	\$ 913,302	\$ 851,289	\$ 765,309
Canneries-Fruit	2111	\$ 2,482,000	\$ 2,000,000	\$ 2,000,000	\$ 2,300,000	\$ 2,250,000
Analytical Labs	4511	\$ -	\$ 110,000	\$ 110,000	\$ 100,000	\$ 100,000

Per Janet total the Payroll
from individual accounts
use those figures.
11/18/98 (sc)

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NOV. -30' 99 (TUE) 15:24

D. H. I. S.

TEL: 916 773 0402

P. 006



FOOD SERVICE INSURANCE MANAGERS

December 4, 1998

Mr. Kevin Jefferey
Frontier Insurance Group
195 Lake Louise Marie Road
Rock Hill, New York 12775-8000

Dear Kevin:

Thanks for getting back to me on the TPA questions. Dan has agreed to go ahead and hire the staff he'll need to handle the Frontier business. He says you will pay the Summit nurse direct, which is fine since I think Ed intends to have her on site there full time. By the way, congratulations on writing that one. It is a major prestige account.

I also want to document our agreement for the one year notice if Ed decides to build his own in-house claims operation. I know that is his plan, and we can't afford to staff up and then have the business moved on us. One year is fair.

Dan also is emphatic that 6% is 2% below the going market rate, so we need to re-negotiate that later on. We'll be fair with you there also; we just don't want to get hit with any unanticipated expense. Ed is really getting the case management piece in shape, which is very exciting for us.

We'll leave it in your hands to coordinate with the claims people there in Rock Hill, but let me know if we need to do anything further.

Sincerely,

Dwight J. Halvorson

cc: Ed Wilson

P.S.: By the way if I do not hear from you, we will assume this agreement is acceptable.

NOV.-30' 99 (TUE) 15:24

D. H. I. S.

TEL: 916 773 0402

P. 007

SENDER: <ul style="list-style-type: none">■ Complete items 1 and/or 2 for additional services.■ Complete items 3, 4a, and 4b.■ Print your name and address on the reverse of this form so that we can return this card to you.■ Attach this form to the front of the mailpiece, or on the back if space does not permit.■ Write "Return Receipt Requested" on the mailpiece below the article number.■ The Return Receipt will show to whom the article was delivered and the date delivered.		I also wish to receive the following services (for an extra fee): 1. <input type="checkbox"/> Addressee's Address 2. <input type="checkbox"/> Restricted Delivery Consult postmaster for fee.	
3. Article Addressed to: <i>Mr. Gerald J. Steines</i> <i>Vice President</i> <i>Frontier Insurance Co.</i> <i>195 Lake Louise Marie Rd</i> <i>Rock Hill, NY 12775-8000</i>		4a. Article Number <i>2435 607 406</i>	
5. Received By: (Print Name)		4b. Service Type <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Certified <input type="checkbox"/> Express Mail <input type="checkbox"/> Insured <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> COD	
6. Signature: (Addressee or Agent) <i>X</i> <i>all</i>		7. Date of Delivery <i>11/19/99</i>	
		8. Addressee's Address (Only if requested and fee is paid)	

PS Form 3811, December 1994 102595-99-B-0229 Domestic Return Receipt

Is your RETURN ADDRESS completed on the reverse side?

Thank you for using Return Receipt Service.

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FOOD SERVICE INSURANCE MANAGERS

December 4, 1998

Mr. Kevin Jefferey
Frontier Insurance Group
195 Lake Louise Marie Road
Rock Hill, New York 12775-8000

Dear Kevin:

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I also want to document our agreement for the one year notice ~~if Ed decides to build his own in-house claims operation~~. I know that is his plan, and we can't afford to staff up and then have the business moved on us. One year is fair.

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We'll leave it in your hands to coordinate with the claims people there in Rock Hill, but let me know if we need to do anything further.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dwight J. Halvorson", is written over a horizontal line.

Dwight J. Halvorson

cc: Ed Wilson

P.S.: By the way if I do not hear from you, we will assume this agreement is acceptable.

11/22/99

~~check~~

RMS + is not
Ed's own in-house
claims operation.



Dwight Halvorson
INSURANCE SERVICES

FAX COVER SHEET

TO: Mr. Kevin Jeffries

FAX#: 914-796-1005

FROM: Dwight Halvorson

DATE: 02/23/99

of Pages 2
(incl. Cover
Sheet): _____

CONFIDENTIAL

Please contact Melissa Miller at 916-773-0206 if entire fax was not received.

3300 Douglas Blvd., Suite 295, Roseville, CA 95661-3807
(916) 773-0206 * FAX (916) 773-0402

SH INCOME PROJECTIONS 1999

TOTAL PREMIUM & FEES

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
15,711,916	245,791	210,761	210,761	273,751	273,751	273,751	336,416	336,416	336,416	398,079	399,079	399,079
109,391	109,391	84,391	121,091	121,091	121,091	121,091	140,666	140,666	140,666	160,290	160,290	160,290
8,000	8,000	8,000	8,000	8,000	8,000	8,000	9,000	9,000	9,000	10,000	10,000	10,000
1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
1,500	1,500	1,500	2,000	2,000	2,000	2,000	2,500	2,500	2,500	3,000	3,000	3,000
2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000
3,500	3,500	3,500	4,000	4,000	4,000	4,000	4,500	4,500	4,500	5,000	5,000	5,000
2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500
250	250	250	250	250	250	250	250	250	250	250	250	250
50,000	50,000	50,000	61,041	61,041	61,041	61,041	72,082	72,082	72,082	83,123	83,123	83,123
2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500
2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500
0	0	0	85,000	0	0	0	0	0	0	0	0	0
183,141	183,141	158,141	291,882	291,882	206,882	206,882	239,498	239,498	239,498	272,163	272,163	272,163

550 AEON PURCHASE

TOTAL SELLING EXPENSE

OD SERVICE INSURANCE MANAGERS INC

SH INCOME PROJECTIONS

	JAN	FEB	MARCH	APRIL	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC
72,500	72,500	72,500	72,500	58,000	58,000	58,000	58,000	59,000	59,000	59,000	59,000	59,000
1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500
200	200	200	200	200	200	200	200	200	200	200	200	200
50	50	50	50	50	50	50	50	50	50	50	50	50
300	300	300	300	300	300	300	300	300	300	300	300	300
1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000
1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
5,250	5,250	5,250	5,250	4,500	4,500	4,500	5,500	5,500	5,500	5,500	5,500	5,500
400	400	400	400	400	400	400	400	400	400	400	400	400
200	200	200	200	200	200	200	200	200	200	200	200	200
1,100	1,100	1,100	1,100	1,100	1,100	1,100	1,100	1,100	1,100	1,100	1,100	1,100
2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000
100	100	100	100	100	100	100	100	100	100	100	100	100
2,500	2,500	2,500	2,500	2,750	2,750	2,750	3,000	3,000	3,000	3,500	3,500	3,500
3,662	3,662	3,662	3,662	3,662	3,662	3,662	3,662	3,662	3,662	3,662	3,662	3,662
200	200	200	200	200	200	200	200	200	200	200	200	200
7,250	7,250	7,250	7,250	5,600	5,600	5,600	7,000	7,000	7,000	7,400	7,400	7,400
5,000	5,000	5,000	5,000	5,500	5,500	5,500	6,000	6,000	6,000	6,500	6,500	6,500
113,962	113,962	113,962	113,962	95,812	95,812	95,812	110,212	110,212	110,212	119,312	119,312	119,312
297,103	297,103	272,103	387,694	302,694	302,694	302,694	349,710	349,710	349,710	391,475	391,475	391,475
(51,312)	(86,312)	(61,312)	(113,943)	(28,943)	(28,943)	(28,943)	(13,294)	(13,294)	(13,294)	7,604	7,604	7,604

TOTAL ADMIN EXPENSE

TOTAL EXPENSES

ESTIMATED NET PROFIT (LOSS)

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03/01/99

Via Fax and Regular Mail, Fax #914-796-1005

Mr. Kevin Jeffrey
Frontier Insurance Company
195 Lake Louise Marie Road
Rock Hill, NY 12775-8000

Dear Kevin:

I would like to summarize some of the topics we discussed at our meeting of February 25, 1999. There are several different issues on the table and Food Service Insurance Managers, Inc. (F.S.I.M.) has given you many projections for the future for your consideration. I will attempt to break each segment out for you and hopefully provide you with a simplified picture of the "who we are" and the "where we are going."

First of all, F.S.I.M. was started by Dwight Halvorson in July of 1996 with two concepts in mind:

1. Commissions were too low for a broker to provide loss control and claims management. These services were also not being provided by the carriers since "open rating" reduced their revenues significantly.
2. Our book of accounts was extremely profitable because of the services we were providing. We were willing to spend the money for these services if we could share in the underwriting profit.

The "rent a captive" program seemed to fit with what we wanted to accomplish because it could provide us with management fees to support our services, while allowing us to capture underwriting profit. As a result of our success in the "food industry" prior to F.S.I.M., we were confident our loss control and claims management services would provide us with a unique product as well as a profitable program. We were correct. F.S.I.M. has produced about \$17,000,000.00 in premium volume since January 1, 1997 and has achieved loss ratios far superior to our competition.

We are now at a crossroads because of our success. There are many opportunities for us to expand and grow. Our future expansion will be both in volume and type of operations. At F.S.I.M., Inc., all employees have one challenge and one goal: to take care of the worker before, during, and after an injury. If we are successful in achieving this goal, our clients win, F.S.I.M. wins, Frontier wins, and F.S.I.M. employees gain satisfaction from successfully helping other human beings. The financial rewards take care of themselves. In the next few paragraphs, I would like to briefly discuss these opportunities.

Mr. Kevin Jeffrey, Frontier Insurance Company
03/01/99
Page 2

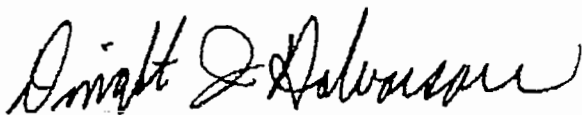
F.S.I.M.

1. Currently, F.S.I.M. needs to add four more Loss Control Consultants at a cost of \$250,000.00 annually. This will increase our marketing capacity and provide us with a better loss ratio. (These consultants will split their time with T.E.A.M.)
2. F.S.I.M. needs \$500,000.00 immediately to cash-flow our current situation since we have been operating at a deficit since day one. Our management fee income will cash-flow our operations in the very near future which will result in F.S.I.M. realizing a profit each month.
3. F.S.I.M. needs to purchase Risk Management Services, Inc. (R.M.S.I. - our Third-Party Administrator) from Dan Henke. Our Third-Party Administrator will be a significant profit center and having claims "in-house" will improve our efficiency and our loss ratio by approximately 6 or 7 points.
4. The Escamilla deal needs to be funded. They are the largest Farm Labor Contractor in California, with a great deal of influence besides their \$2,000,000.00 annual premium. Just as you are concerned about giving F.S.I.M. a capital infusion and then losing the program, I am concerned about committing to Frontier and then not getting the Escamilla deal done.
5. T.E.A.M. is a subsidiary of F.S.I.M. which specializes in H/R and Labor Relations. T.E.A.M. receives their revenue on a "fee-for-service" basis. You have received a list of their services at our meeting. By providing these services to the client, we will increase our volume and produce a better loss ratio.

Hopefully, this will give you a brief overview of the F.S.I.M. plan. I will have a detailed marketing plan for you within the next couple of days. If you have any questions regarding this letter or any other issue, please call me.

Sincerely,

FOOD SERVICE INSURANCE MANAGERS



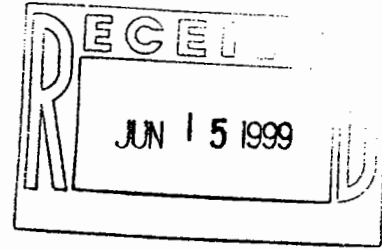
Dwight J. Halvorson, CEO

DJH:mmm

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F.S.I.M.
FOOD SERVICES INSURANCE MANAGERS, INC.

==MEMORANDUM==



TO : Laura J. Notarbartolo
FROM : George Hagosian
DATE : June 9, 1999
SUBJECT : *FSIM Policy Revisions*

In response to your April 9, 1999 memo (copy attached), I have completed the revisions requested. Following conversations with Janet Backer, I was advised to mail the finished product(s) to your attention.

For each of the fourteen (14) policies revised, I have sent two copies. Janet wanted Frontier to check these revisions for accuracy, and said you would send the "proofed" copy to the WCIRB.

I am in receipt of your June 3, 1999 memo, and have begun work on these requested revisions. I beg your indulgence on these as we are in the push for July new and renewal business. July (as you probably already know) is our largest month. I will put forth every effort to expedite these revisions.


As was the case with the first set of revisions, I truly appreciate your patience and assistance. Should you have any questions please do not hesitate to call.

cc: Janet Backer.

Per you, conv w/ Janet

- He's going to charge for IL on all quotes on a going forward basis.
- All prior quotes. ~~no need to~~ it was agreed ^{in ac} that we would not endorse the change in ~~IL~~ limits at this. Should the state come back to us, we will advise.
- we understand the time pressures you're under, however, it is critical that we receive the corrected policies no later than (2 weeks) to avoid an unapplied cash issues.
further

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 Francis Blamey
(916) - 727-0740 Phone #
916 - 727-0741 Fax #
(Contact person)

F.S.I.M.

8391 Auburn Blvd. Suite 2

Citrus Heights, CA 95610

(916) 727-07540. Fax (916) 727-0751

Memo

Claims
~~Reserves~~ over "\$50,000 only
(from Dave Jackson)

To: Dave Jackson, Frontier Insurance
From: Nancy McAlpin
CC: George Hagosian, Ed Wilson, Frances Blamey
Date: 07/08/99
Re: Large Loss Reports

*Thanks
Nancy*

Attached is a report showing claims with reserves over \$50,000.

All have been previously reported except:

Joel Ruvalcaba; DOI 8/11/98

Jaimie Espinal; DOI 7/06/98

Roy Gomez; DOI 1/21/99

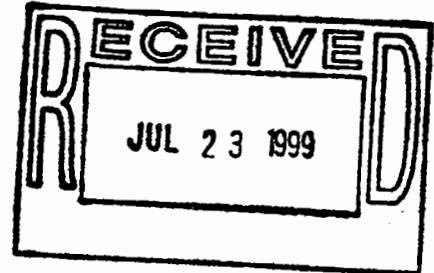
Joel Ruvalcaba was resolved by a Stipulated Award for \$24,000 in Feb '99, future med is open & he has commenced vocational rehabilitation. Jaimie Espinal was settled by Compromise & Release for \$17,500 in May '99. He is currently involved in vocational rehabilitation which should be completed in the next 60 days. Please let me know if you will need Large Loss reports on these two claims.

A report is in the process of being completed on Roy Gomez. Also, I note that quite a few supplemental reports are due in July and I will forward them to you upon receipt.

Please let me know if you need additional information.

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8391 Auburn Blvd. Ste 2
Citrus Heights, CA 95610
Phone: 916-727-0740 ext 111
Fax: 916-727-0742

F.S.I.M.**FAX****To:** Janet Backer**From:** Frances Blamey**Date:** 7/22/1999**Fax #:** 914-796-1005**# pages:** 29

including cover

Re: Updated loss data**CC:**

☐ **Urgent** ☐ **For Review** ☐ **Please Comment** ☐ **Please Reply** ☐ **Please Recycle**

•Comments:

Attached is a copy of the data you requested.
It is sorted as follows:

All claims on policies incepting in 1998 (by treaty year)
All claims with injuries in 1998
All claims on policies incepting in 1999
All claims with injuries in 1999

The above data is for Frontier FSIM only.

Call me if you have any questions or need additional information.

Frances Blamey

Handwritten note:
1 copy of 7/22/99
2 copies of
ones clipped
for Janet
- 3 copies of
all - Allison, Betty
+ Tish

Run Date: 07/22/1999
Run Time: 15:58:33

Frontier FSIM policies Incepting in 1998,
valued as of 6/30/1999

Food Service Insurance Mgr's/Frontier Management Summary

06/01/1999 through 06/30/1999

Insured	# of claims	Open	Closed	Paid < SIR	Reserves to date	Incurred < SIR	Paid > SIR	Incurred > SIR	Total Incurred	Recover
Insured : AMYS KITCHEN, INC. 12/1/98-11/30/99	48	26	22	82,992.66	121,788.70	204,781.36	0.00	0.00	204,781.36	0.00
AMYS KITCHEN, INC. 12/1/98-11/30/99										
Insured Totals	48	26	22	82,992.66	121,788.70	204,781.36	0.00	0.00	204,781.36	0.00
Insured : ATHENS BAKING CO., LLC - 98/99	8	4	4	1,502.57	32.64	1,535.21	0.00	0.00	1,535.21	0.00
ATHENS BAKING CO., LLC - 98/99										
Insured Totals	8	4	4	1,502.57	32.64	1,535.21	0.00	0.00	1,535.21	0.00
Insured : BAR 20 DAIRY FARMS 1/1/98-12/31/98	3	2	1	23,010.09	2,990.42	26,000.51	0.00	0.00	26,000.51	0.00
BAR 20 DAIRY FARMS 1/1/98-12/31/98										
Insured Totals	3	1	2	15,504.02	7,546.74	23,052.76	0.00	0.00	23,052.76	0.00
Insured : BIEN NACIDO VINEYARDS - 98	8	7	1	58,453.50	48,552.70	107,006.20	0.00	0.00	107,006.20	0.00
BIEN NACIDO VINEYARDS - 98										
Insured Totals	8	7	1	58,453.50	48,552.70	107,006.20	0.00	0.00	107,006.20	0.00
Insured : BU HARVESTING, INC - 1998	1	0	1	14,705.42	0.00	14,705.42	0.00	0.00	14,705.42	0.00
BU HARVESTING, INC - 1998										
Insured Totals	1	0	1	14,705.42	0.00	14,705.42	0.00	0.00	14,705.42	0.00
Insured : CAL WEST FARMING 5/1/98-9/17/98	17	6	11	101,729.74	189,290.06	291,019.80	0.00	0.00	291,019.80	0.00
CAL WEST FARMING 5/1/98-9/17/98										
Insured Totals	8	4	4	60,100.17	13,148.58	73,248.75	0.00	0.00	73,248.75	0.00
Insured : CAL WEST FARMING, INC. 9/18/98-9/17/99	27	14	13	107,213.52	126,979.00	234,192.52	0.00	0.00	234,192.52	0.00
CAL WEST FARMING, INC. 9/18/98-9/17/99										
Insured Totals	27	14	13	107,213.52	126,979.00	234,192.52	0.00	0.00	234,192.52	0.00
Insured : CASPER BERRY FARMS, INC. - 98	6	6	0	4,404.03	18,416.65	22,820.68	0.00	0.00	22,820.68	0.00
CASPER BERRY FARMS, INC. - 98										
Insured Totals	6	6	0	4,404.03	18,416.65	22,820.68	0.00	0.00	22,820.68	0.00

Run Date: 07/22/1999
Run Time: 15:58:33

Frontier FSM policies Incepting in 1998.
valued as of 6/30/1999

Food Service Insurance Mgr's/Frontier Management Summary

06/01/1999 through 06/30/1999

Insured	# of claims	Open	Closed	Paid < SIR	Reserves to date	Incurred < SIR	Paid > SIR	Incurred > SIR	Total Incurred	Recovery
Insured: CHANNEL ISLANDS BERRY FARMS, INC. - 98										
CHANNEL ISLANDS BERRY FARMS, INC. - 98	7	4	3	5,626.19	34,887.91	40,514.10	0.00	0.00	40,514.10	0.00
Insured Totals	7	4	3	5,626.19	34,887.91	40,514.10	0.00	0.00	40,514.10	0.00
Insured: CONROY FARMS, INC. - 98										
CONROY FARMS, INC. - 98	5	5	0	6,287.80	9,348.00	15,635.80	0.00	0.00	15,635.80	0.00
Insured Totals	5	5	0	6,287.80	9,348.00	15,635.80	0.00	0.00	15,635.80	0.00
* Insured: COUNTRY GOLD 5/20/98-7/1/98										
COUNTRY GOLD 5/20/98-7/1/98	2	0	2	16,866.46	0.00	16,866.46	0.00	0.00	16,866.46	0.00
Insured Totals	2	0	2	16,866.46	0.00	16,866.46	0.00	0.00	16,866.46	0.00
Insured: COUNTRY GOLD 7/1/98-7/1/99										
COUNTRY GOLD 7/1/98-7/1/99	8	7	1	34,000.18	45,273.59	79,273.77	0.00	0.00	79,273.77	0.00
Insured Totals	8	7	1	34,000.18	45,273.59	79,273.77	0.00	0.00	79,273.77	0.00
Insured: D&V HARVESTING										
D&V HARVESTING	1	1	0	194.50	0.00	194.50	0.00	0.00	194.50	0.00
D&V HARVESTING	2	0	2	8,326.77	0.00	8,326.77	0.00	0.00	8,326.77	0.00
Insured Totals	3	1	2	8,521.27	0.00	8,521.27	0.00	0.00	8,521.27	0.00
Insured: DESERT PACKING 7/1/98-6/30/99										
DESERT PACKING 7/1/98-6/30/99	11	7	4	31,129.64	48,311.61	79,441.25	0.00	0.00	79,441.25	0.00
Insured Totals	11	7	4	31,129.64	48,311.61	79,441.25	0.00	0.00	79,441.25	0.00
Insured: DUNLAP MANAGEMENT										
DUNLAP MANAGEMENT	2	1	1	588.60	0.00	588.60	0.00	0.00	588.60	0.00
DUNLAP MANAGEMENT	1	0	1	8,502.24	0.00	8,502.24	0.00	0.00	8,502.24	0.00
Insured Totals	3	1	2	9,090.84	0.00	9,090.84	0.00	0.00	9,090.84	0.00
* Insured: EARTHBOUND FARMS 7/1/98-7/1/99										
EARTHBOUND FARMS 7/1/98-7/1/99	7	3	4	18,760.29	0.00	18,760.29	0.00	0.00	18,760.29	0.00
Insured Totals	7	3	4	18,760.29	0.00	18,760.29	0.00	0.00	18,760.29	0.00

Food Service Insurance Mgr's/Frontier
Management Summary
06/01/1999 through 06/30/1999

Run Date: 07/22/1999
Run Time: 15:58:33
Frontier FSIM policies incepting in 1998.
valued as of 6/30/1999

Insured	# of claims	Open	Closed	Paid < SIR	Reserves to date	Incurred < SIR	Paid > SIR	Incurred > SIR	Total Incurred	Recovery
Insured : FRANK SPENGLERS CO., INC - T.I.B.										
FRANK SPENGLERS CO., INC - T.I.B.	9	5	4	47,334.37	23,279.77	70,614.14	0.00	0.00	70,614.14	0.00
Insured Totals	9	5	4	47,334.37	23,279.77	70,614.14	0.00	0.00	70,614.14	0.00
Insured : FUKUTOMI FARMS, INC - 98										
FUKUTOMI FARMS, INC - 98	7	4	3	15,557.73	3,251.24	18,808.97	0.00	0.00	18,808.97	0.00
Insured Totals	7	4	3	15,557.73	3,251.24	18,808.97	0.00	0.00	18,808.97	0.00
Insured : FULFILLMENT SYSTEMS, INC - 98										
FULFILLMENT SYSTEMS, INC - 98	39	15	24	63,896.50	36,288.70	100,185.20	0.00	0.00	100,185.20	0.00
Insured Totals	39	15	24	63,896.50	36,288.70	100,185.20	0.00	0.00	100,185.20	0.00
Insured : GOLDBERG & SOLOWY FOODS, INC. - 98										
GOLDBERG & SOLOWY FOODS, INC. - 98	23	7	16	86,146.46	38,295.46	124,441.92	0.00	0.00	124,441.92	0.00
Insured Totals	23	7	16	86,146.46	38,295.46	124,441.92	0.00	0.00	124,441.92	0.00
Insured : GROWERS AZ 7/1/98-6/30/99										
GROWERS AZ 7/1/98-6/30/99	21	5	16	52,678.16	34,666.03	87,344.19	0.00	0.00	87,344.19	0.00
Insured Totals	21	5	16	52,678.16	34,666.03	87,344.19	0.00	0.00	87,344.19	0.00
Insured : GROWERS TRANSPORT 1/1/98-12/31/98										
GROWERS TRANSPORT 1/1/98-12/31/98	1	0	1	2,935.96	0.00	2,935.96	0.00	0.00	2,935.96	0.00
GROWERS TRANSPORT 1/1/98-12/31/98	2	0	2	2,480.22	0.00	2,480.22	0.00	0.00	2,480.22	0.00
Insured Totals	3	0	3	5,416.18	0.00	5,416.18	0.00	0.00	5,416.18	0.00
Insured : GROWERS VEGETABLE 5/1/98-4/30/99										
GROWERS VEGETABLE 5/1/98-4/30/99	1	1	0	8,901.91	786.57	9,688.48	0.00	0.00	9,688.48	0.00
GROWERS VEGETABLE 5/1/98-4/30/99	4	4	0	18,737.95	34,520.93	53,258.88	0.00	0.00	53,258.88	0.00
Insured Totals	5	5	0	27,639.86	35,307.50	62,947.36	0.00	0.00	62,947.36	0.00
Insured : GUDPAK, INC 9/30/98-9/29/99										
GUDPAK, INC 9/30/98-9/29/99	15	8	7	19,238.37	21,519.07	40,757.44	0.00	0.00	40,757.44	0.00
Insured Totals	16	8	7	19,238.37	21,519.07	40,757.44	0.00	0.00	40,757.44	0.00

Run Date: 07/22/1999
Run Time: 15:58:33

Frontier FSM policies Incepting In 1998.
valued as of 6/30/1999

Food Service Insurance Mgr's/Frontier Management Summary

06/01/1999 through 06/30/1999

Insured	# of claims			Open	Closed	Paid < SIR	Reserves to date	Inured < SIR	Paid > SIR	Inured > SIR	Total Inured	Recovery
Insured : HASEGAWA FARMS, INC. - 98												
HASEGAWA FARMS, INC. - 98	4	4	0	4	0	12,456.89	43,001.57	55,458.46	0.00	0.00	55,458.46	0.00
Insured Totals	4	4	0	4	0	12,456.89	43,001.57	55,458.46	0.00	0.00	55,458.46	0.00
Insured : HIJI BROTHERS, INC. - 98												
HIJI BROTHERS, INC. - 98	31	13	18	13	18	113,563.68	49,417.37	162,981.05	0.00	0.00	162,981.05	0.00
Insured Totals	31	13	18	13	18	113,563.68	49,417.37	162,981.05	0.00	0.00	162,981.05	0.00
Insured : HOLIDAY QUALITY FOODS - 98												
HOLIDAY QUALITY FOODS - 98	9	4	5	4	5	53,990.82	44,087.01	98,077.83	0.00	0.00	98,077.83	0.00
HOLIDAY QUALITY FOODS - 98	21	10	11	10	11	14,036.51	21,238.26	35,274.77	0.00	0.00	35,274.77	0.00
Insured Totals	30	14	16	14	16	68,027.33	65,325.27	133,352.60	0.00	0.00	133,352.60	0.00
Insured : HOLIDAY RANCHES, INC. - 98												
HOLIDAY RANCHES, INC. - 98	1	1	0	1	0	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Insured Totals	1	1	0	1	0	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Insured : KGM HARVESTING - 98												
KGM HARVESTING - 98	2	2	0	2	0	10,150.00	6,860.22	17,010.22	0.00	0.00	17,010.22	0.00
Insured Totals	2	2	0	2	0	10,150.00	6,860.22	17,010.22	0.00	0.00	17,010.22	0.00
Insured : La Tapatia 98												
La Tapatia 98	9	1	8	1	8	11,286.86	4,073.86	15,360.72	0.00	0.00	15,360.72	0.00
La Tapatia 98	24	7	17	7	17	46,646.56	17,248.17	63,894.73	0.00	0.00	63,894.73	0.00
Insured Totals	33	8	25	8	25	57,933.42	21,322.03	79,255.45	0.00	0.00	79,255.45	0.00
Insured : MARTINEZ FARMS - 98												
MARTINEZ FARMS - 98	2	2	0	2	0	1,938.86	2,247.82	4,186.68	0.00	0.00	4,186.68	0.00
Insured Totals	2	2	0	2	0	1,938.86	2,247.82	4,186.68	0.00	0.00	4,186.68	0.00
Insured : MILL VALLEY MARKET, INC. - 98												
MILL VALLEY MARKET, INC. - 98	3	1	2	1	2	1,333.14	0.00	1,333.14	0.00	0.00	1,333.14	0.00
Insured Totals	3	1	2	1	2	1,333.14	0.00	1,333.14	0.00	0.00	1,333.14	0.00

Run Date: 07/22/1999
Run Time: 15:58:33
Frontier FSM policies incepting in 1998,
valued as of 6/30/1999

Food Service Insurance Mgr's/Frontier
Management Summary
06/01/1999 through 06/30/1999

Insured	# of claims	Open	Closed	Paid < SIR	Reserves to date	Incurred < SIR	Paid > SIR	Incurred > SIR	Total Incurred	Recovery
Insured : MJS, INC. - 98/99 MJS, INC. - 98/99										
Insured Totals	21	12	9	26,856.40	15,890.28	42,746.68	0.00	0.00	42,746.68	0.00
Insured : Natural Selection 1998 Natural Selection 1998										
Insured Totals	31	11	20	72,497.90	71,503.33	144,001.23	0.00	0.00	144,001.23	0.00
Insured : NATURAL SELECTION AZ-98 NATURAL SELECTION AZ-98										
Insured Totals	16	1	15	4,562.22	4,210.42	8,772.64	0.00	0.00	8,772.64	0.00
Insured : NORTH STATE GROCERY - 98 NORTH STATE GROCERY - 98										
Insured Totals	16	1	15	4,562.22	4,210.42	8,772.64	0.00	0.00	8,772.64	0.00
Insured : NORTH STATE GROCERY - 98 NORTH STATE GROCERY - 98										
Insured Totals	13	3	10	50,344.45	29,144.65	79,489.10	0.00	0.00	79,489.10	0.00
Insured : ODWALLA - 98 ODWALLA - 98										
Insured Totals	53	14	39	54,036.61	34,155.57	88,192.18	0.00	0.00	88,192.18	0.00
Insured : OLIVERS MARKET OLIVERS MARKET										
Insured Totals	66	17	49	104,381.06	63,300.22	167,681.28	0.00	0.00	167,681.28	0.00
Insured : ORGANIC FOOD PRODUCTS ORGANIC FOOD PRODUCTS										
Insured Totals	56	16	40	72,211.58	57,646.26	129,857.84	0.00	0.00	129,857.84	0.00
Insured : PACIFICO BERRY FARMS - 98 PACIFICO BERRY FARMS - 98										
Insured Totals	19	9	10	15,488.61	21,340.81	36,829.42	0.00	0.00	36,829.42	0.00
Insured : ORGANIC FOOD PRODUCTS ORGANIC FOOD PRODUCTS										
Insured Totals	19	9	10	15,488.61	21,340.81	36,829.42	0.00	0.00	36,829.42	0.00
Insured : ORGANIC FOOD PRODUCTS ORGANIC FOOD PRODUCTS										
Insured Totals	3	1	2	27,312.11	111,987.32	139,299.43	0.00	0.00	139,299.43	0.00
Insured : PACIFICO BERRY FARMS - 98 PACIFICO BERRY FARMS - 98										
Insured Totals	8	6	2	36,086.99	42,240.66	78,327.65	0.00	0.00	78,327.65	0.00
Insured : PACIFICO BERRY FARMS - 98 PACIFICO BERRY FARMS - 98										
Insured Totals	11	7	4	63,399.10	154,227.98	217,627.08	0.00	0.00	217,627.08	0.00
Insured : PACIFICO BERRY FARMS - 98 PACIFICO BERRY FARMS - 98										
Insured Totals	15	12	3	17,617.61	67,796.51	85,414.12	0.00	0.00	85,414.12	0.00
Insured : PACIFICO BERRY FARMS - 98 PACIFICO BERRY FARMS - 98										
Insured Totals	15	12	3	17,617.61	67,796.51	85,414.12	0.00	0.00	85,414.12	0.00

Run Date: 07/22/1999
Run Time: 15:58:33
Frontier FSLM policies incepting in 1998,
valued as of 6/30/1999

Food Service Insurance Mgr's/Frontier Management Summary 06/01/1999 through 06/30/1999

Page: 6 of 7

Case: 1:04-cv-03361-RJS-HBP Document 13-8 Filed 09/27/2004 Page 17 of 49

Insured	# of claims	Open	Closed	Paid < SIR	Reserves to date	Incurred < SIR	Paid > SIR	Incurred > SIR	Total Incurred	Recovery
Insured : POPLAR FARMS, INC. - 98										
POPLAR FARMS, INC. - 98	10	5	5	3,737.48	30,490.35	34,227.83	0.00	0.00	34,227.83	0.00
Insured Totals	10	5	5	3,737.48	30,490.35	34,227.83	0.00	0.00	34,227.83	0.00
Insured : Producers Dairy Products, Inc. - 98										
Producers Dairy Products, Inc - 98	32	9	23	221,220.66	128,701.85	349,922.51	0.00	0.00	349,922.51	0.00
Producers Dairy Products, Inc - 98	20	2	18	27,792.92	9,177.56	36,970.48	0.00	0.00	36,970.48	0.00
Insured Totals	52	11	41	249,013.58	137,879.41	386,892.99	0.00	0.00	386,892.99	0.00
Insured : PROGRESSO HARVESTING & FARMING, LLC										
PROGRESSO HARVESTING & FARMING, LLC	1	1	0	849.56	0.00	849.56	0.00	0.00	849.56	0.00
Insured Totals	1	1	0	849.56	0.00	849.56	0.00	0.00	849.56	0.00
Insured : RIO MESA FARMS - 98										
RIO MESA FARMS - 98	6	3	3	965.94	11,676.18	12,642.12	0.00	0.00	12,642.12	0.00
Insured Totals	6	3	3	965.94	11,676.18	12,642.12	0.00	0.00	12,642.12	0.00
Insured : S.K. FOODS, LP										
S.K. FOODS, LP	22	4	18	10,834.07	36,112.25	46,946.32	0.00	0.00	46,946.32	0.00
Insured Totals	22	4	18	10,834.07	36,112.25	46,946.32	0.00	0.00	46,946.32	0.00
Insured : SAFARI HARVESTING & FARMING, LLC										
SAFARI HARVESTING & FARMING, LLC	1	1	0	0.00	2,500.00	2,500.00	0.00	0.00	2,500.00	0.00
Insured Totals	1	1	0	0.00	2,500.00	2,500.00	0.00	0.00	2,500.00	0.00
Insured : SANTA CLARA FARMS - 98										
SANTA CLARA FARMS - 98	7	3	4	11,891.95	173,055.45	184,947.40	0.00	0.00	184,947.40	0.00
Insured Totals	7	3	4	11,891.95	173,055.45	184,947.40	0.00	0.00	184,947.40	0.00
Insured : Sierra Citrus Association										
Sierra Citrus Association	22	4	18	89,304.98	24,150.73	113,455.71	0.00	0.00	113,455.71	0.00
Sierra Citrus Association	10	2	8	92,082.18	70,240.32	162,322.50	0.00	0.00	162,322.50	0.00
Insured Totals	32	6	26	181,387.16	94,391.05	275,778.21	0.00	0.00	275,778.21	0.00

Run By: Confidential

Run By:

Run Date: 07/22/1999
Run Time: 15:58:33

Frontier FSIIM policies Incepting In: 1998.
valued as of 6/30/1999

Food Service Insurance Mgr's/Frontier Management Summary

06/01/1999 through 06/30/1999

Insured	# of claims	Open	Closed	Paid < SIR	Reserves to date	Incurred < SIR	Paid > SIR	Incurred > SIR	Total Incurred	Recovery
Insured : SUNSWEET DRYERS 7/1/98 - 7/1/99										
SUNSWEET DRYERS 7/1/98 - 7/1/99	8	5	3	29,239.31	37,129.58	66,368.89	0.00	0.00	66,368.89	0.00
Insured Totals	8	5	3	29,239.31	37,129.58	66,368.89	0.00	0.00	66,368.89	0.00
Insured : SWISS LOUIS RESTAURANT - 98										
SWISS LOUIS RESTAURANT - 98	3	3	0	15,444.10	35,689.25	51,133.35	0.00	0.00	51,133.35	0.00
Insured Totals	3	3	0	15,444.10	35,689.25	51,133.35	0.00	0.00	51,133.35	0.00
Insured : The Growers Company CA										
The Growers Company	19	9	10	18,598.14	33,430.73	52,028.87	0.00	0.00	52,028.87	0.00
Insured Totals	19	9	10	18,598.14	33,430.73	52,028.87	0.00	0.00	52,028.87	0.00
Insured : TRICAL INC. 4/30/99-4/30/00										
TRICAL INC. 4/30/99-4/30/00	1	1	0	890.47	0.00	890.47	0.00	0.00	890.47	0.00
Insured Totals	1	1	0	890.47	0.00	890.47	0.00	0.00	890.47	0.00
Insured : V L FARMS - 98										
V L FARMS - 98	2	1	1	1,946.84	0.00	1,946.84	0.00	0.00	1,946.84	0.00
V L FARMS - 98	1	0	1	6,160.96	77.87	6,238.83	0.00	0.00	6,238.83	0.00
Insured Totals	3	1	2	8,107.80	77.87	8,185.67	0.00	0.00	8,185.67	0.00
Insured : VALLE DORADO AGRI. SERV. - 98										
VALLE DORADO AGRI. SERV. - 98	5	3	2	68,546.77	34,267.10	102,813.87	0.00	0.00	102,813.87	0.00
Insured Totals	5	3	2	68,546.77	34,267.10	102,813.87	0.00	0.00	102,813.87	0.00
Grand Totals	808	333	475	2,159,730.15	2,129,965.68	4,289,695.83	0.00	0.00	4,289,695.83	0.00

Run Date: 07/22/1999
Run Time: 16:02:02

Frontier FSIM Dates of Injury in 1998
As of 6/30/1999

Food Service Insurance Mgr's/Frontier Management Summary 06/01/1999 through 06/30/1999

Insured	# of claims	Open	Closed	Paid < SIR	Reserves to date	Incurred < SIR	Paid > SIR	Incurred > SIR	Total Incurred	Recover
Insured : AMYS KITCHEN, INC. 12/1/98-11/30/99										
AMYS KITCHEN, INC. 12/1/98-11/30/99	5	3	2	18,971.40	16,347.18	35,318.58	0.00	0.00	35,318.58	0.00
Insured Totals	5	3	2	18,971.40	16,347.18	35,318.58	0.00	0.00	35,318.58	0.00
Insured : BAR 20 DAIRY FARMS 1/1/98-12/31/98										
BAR 20 DAIRY FARMS 1/1/98-12/31/98	3	2	1	23,010.09	2,990.42	26,000.51	0.00	0.00	26,000.51	0.00
BAR 20 DAIRY FARMS 1/1/98-12/31/98	3	1	2	15,504.02	7,548.74	23,052.76	0.00	0.00	23,052.76	0.00
Insured Totals	6	3	3	38,514.11	10,539.16	49,053.27	0.00	0.00	49,053.27	0.00
Insured : BIEN NACIDO VINEYARDS - 98										
BIEN NACIDO VINEYARDS - 98	3	2	1	42,982.07	29,172.64	72,154.71	0.00	0.00	72,154.71	0.00
Insured Totals	3	2	1	42,982.07	29,172.64	72,154.71	0.00	0.00	72,154.71	0.00
Insured : CAL WEST FARMING 5/1/98-9/17/98										
CAL WEST FARMING 5/1/98-9/17/98	17	6	11	101,729.74	189,290.06	291,019.80	0.00	0.00	291,019.80	0.00
CAL WEST FARMING 5/1/98-9/17/98	8	4	4	60,100.17	13,148.58	73,248.75	0.00	0.00	73,248.75	0.00
Insured Totals	25	10	15	161,829.91	202,438.64	364,268.55	0.00	0.00	364,268.55	0.00
Insured : CAL WEST FARMING, INC. 9/18/98-9/17/99										
CAL WEST FARMING, INC. 9/18/98-9/17/99	24	11	13	102,007.02	103,878.65	205,885.67	0.00	0.00	205,885.67	0.00
Insured Totals	24	11	13	102,007.02	103,878.65	205,885.67	0.00	0.00	205,885.67	0.00
Insured : COACHELLA VALLEY CITRUS 1/1/98-12/31/98										
COACHELLA VALLEY CITRUS 1/1/98-12/31/98	14	7	7	363,743.73	155,334.95	519,078.68	0.00	204,012.34	723,091.02	0.00
COACHELLA VALLEY CITRUS 1/1/98-12/31/98	11	5	6	85,510.40	52,410.06	137,920.46	0.00	0.00	137,920.46	0.00
Insured Totals	25	12	13	449,254.13	207,745.01	656,999.14	0.00	204,012.34	861,011.48	0.00
Insured : CORONET AZ 9/1/98-9/1/99										
CORONET AZ 9/1/98-9/1/99	1	1	0	0.00	100.00	100.00	0.00	0.00	100.00	0.00
Insured Totals	1	1	0	0.00	100.00	100.00	0.00	0.00	100.00	0.00
Insured : CORONET FOODS, INC. 9/1/98-9/1/99										
CORONET FOODS, INC. 9/1/98-9/1/99	2	2	0	19,596.35	5,668.86	25,265.21	0.00	0.00	25,265.21	0.00
Insured Totals	2	2	0	19,596.35	5,668.86	25,265.21	0.00	0.00	25,265.21	0.00

Run Date: 07/22/1999

Run Time: 16:02:02

Frontier FSIM Dates of Injury in 1998

As of 6/30/1999

Food Service Insurance Mgr's/Frontier

Management Summary

06/01/1998 through 06/30/1999

Insured	# of claims	Open	Closed	Paid < SIR	Reserves to date	Incurred < SIR	Paid > SIR	Incurred > SIR	Total Incurred	Recover
Insured : COUNTRY GOLD 5/20/98-7/1/98										
COUNTRY GOLD 5/20/98-7/1/98	2	0	2	16,866.46	0.00	16,866.46	0.00	0.00	16,866.46	0.0
Insured Totals	2	0	2	16,866.46	0.00	16,866.46	0.00	0.00	16,866.46	0.0
Insured : COUNTRY GOLD 7/1/98-7/1/99										
COUNTRY GOLD 7/1/98-7/1/99	2	1	1	25,220.61	2,144.00	27,364.61	0.00	0.00	27,364.61	0.0
Insured Totals	2	1	1	25,220.61	2,144.00	27,364.61	0.00	0.00	27,364.61	0.0
Insured : D&V HARVESTING										
D&V HARVESTING	1	1	0	194.50	0.00	194.50	0.00	0.00	194.50	0.0
D&V HARVESTING	2	0	2	8,326.77	0.00	8,326.77	0.00	0.00	8,326.77	0.0
Insured Totals	3	1	2	8,521.27	0.00	8,521.27	0.00	0.00	8,521.27	0.0
Insured : DESERT PACKING 7/1/98-6/30/99										
DESERT PACKING 7/1/98-6/30/99	3	2	1	23,517.57	25,155.01	48,672.58	0.00	0.00	48,672.58	0.0
Insured Totals	3	2	1	23,517.57	25,155.01	48,672.58	0.00	0.00	48,672.58	0.0
Insured : DUNLAP MANAGEMENT										
DUNLAP MANAGEMENT	2	1	1	588.60	0.00	588.60	0.00	0.00	588.60	0.0
DUNLAP MANAGEMENT	1	0	1	8,502.24	0.00	8,502.24	0.00	0.00	8,502.24	0.0
Insured Totals	3	1	2	9,090.84	0.00	9,090.84	0.00	0.00	9,090.84	0.0
Insured : EARTHBOUND FARMS 7/1/98-7/1/99										
EARTHBOUND FARMS 7/1/98-7/1/99	4	0	4	18,760.29	0.00	18,760.29	0.00	0.00	18,760.29	0.0
Insured Totals	4	0	4	18,760.29	0.00	18,760.29	0.00	0.00	18,760.29	0.0
Insured : FRANK SPENGLERS CO., INC - T.I.B.										
FRANK SPENGLERS CO., INC - T.I.B.	7	4	3	43,727.00	23,279.77	67,006.77	0.00	0.00	67,006.77	0.0
Insured Totals	7	4	3	43,727.00	23,279.77	67,006.77	0.00	0.00	67,006.77	0.0
Insured : FUKUTOMI FARMS, INC - 98										
FUKUTOMI FARMS, INC - 98	1	1	0	4,573.18	3,251.24	7,824.42	0.00	0.00	7,824.42	0.0
Insured Totals	1	1	0	4,573.18	3,251.24	7,824.42	0.00	0.00	7,824.42	0.0

Run Date: 07/22/1999
Run Time: 16:02:02

Frontier FSIM Dates of Injury in 1998
As of 6/30/1999

Food Service Insurance Mgr's/Frontier
Management Summary
06/01/1998 through 06/30/1998

Insured	# of claims	Open	Closed	Paid < SIR	Reserves to date	Incurred < SIR	Paid > SIR	Incurred > SIR	Total Incurred	Recovered
Insured : FULFILLMENT SYSTEMS, INC. - 98										
FULFILLMENT SYSTEMS, INC. - 98	17	5	12	57,832.08	29,487.76	87,319.84	0.00	0.00	87,319.84	0.00
Insured Totals	17	5	12	57,832.08	29,487.76	87,319.84	0.00	0.00	87,319.84	0.00
Insured : GEORGE PERRY & SONS 1/1/98-12/31/98										
GEORGE PERRY & SONS 1/1/98-12/31/98	3	0	3	22,494.62	30.50	22,525.12	0.00	0.00	22,525.12	0.00
Insured Totals	3	0	3	22,494.62	30.50	22,525.12	0.00	0.00	22,525.12	0.00
Insured : GOLDBERG & SOLOVY FOODS, INC. - 98										
GOLDBERG & SOLOVY FOODS, INC. - 98	10	1	9	62,020.71	28,157.35	90,178.06	0.00	0.00	90,178.06	0.00
Insured Totals	10	1	9	62,020.71	28,157.35	90,178.06	0.00	0.00	90,178.06	0.00
Insured : GROWERS AZ 7/1/98-6/30/99										
GROWERS AZ 7/1/98-6/30/99	12	2	10	45,812.13	21,185.51	66,997.64	0.00	0.00	66,997.64	0.00
Insured Totals	12	2	10	45,812.13	21,185.51	66,997.64	0.00	0.00	66,997.64	0.00
Insured : GROWERS TRANSPORT 1/1/98-12/31/98										
GROWERS TRANSPORT 1/1/98-12/31/98	1	0	1	2,935.96	0.00	2,935.96	0.00	0.00	2,935.96	0.00
GROWERS TRANSPORT 1/1/98-12/31/98	2	0	2	2,480.22	0.00	2,480.22	0.00	0.00	2,480.22	0.00
Insured Totals	3	0	3	5,416.18	0.00	5,416.18	0.00	0.00	5,416.18	0.00
Insured : GROWERS VEGETABLE 5/1/98-4/30/99										
GROWERS VEGETABLE 5/1/98-4/30/99	1	1	0	8,901.91	786.57	9,688.48	0.00	0.00	9,688.48	0.00
GROWERS VEGETABLE 5/1/98-4/30/99	1	1	0	15,038.43	9,931.83	24,970.26	0.00	0.00	24,970.26	0.00
Insured Totals	2	2	0	23,940.34	10,718.40	34,658.74	0.00	0.00	34,658.74	0.00
Insured : GUDPAK, INC 9/30/98-9/29/99										
GUDPAK, INC 9/30/98-9/29/99	8	2	6	18,605.35	15,179.07	33,784.42	0.00	0.00	33,784.42	0.00
Insured Totals	8	2	6	18,605.35	15,179.07	33,784.42	0.00	0.00	33,784.42	0.00
Insured : HASEGAWA FARMS, INC. - 98										
HASEGAWA FARMS, INC. - 98	1	1	0	11,214.15	15,255.67	26,469.82	0.00	0.00	26,469.82	0.00
Insured Totals	1	1	0	11,214.15	15,255.67	26,469.82	0.00	0.00	26,469.82	0.00

Run Date: 07/22/1999
Run Time: 16:02:02

Frontier FSIM Dates of Injury In 1998
As of 6/30/1999

Food Service Insurance Mgr's/Frontier Management Summary

08/01/1999 through 08/30/1999

Insured	# of claims	Open	Closed	Paid < SR	Reserves to date	Incurred < SR	Paid > SR	Incurred > SR	Total Incurred	Receiver
Insured : HILJI BROTHERS, INC. - 98										
HILJI BROTHERS, INC. - 98	16	2	14	80,883.32	8,346.41	89,229.73	0.00	0.00	89,229.73	0.00
Insured Totals	16	2	14	80,883.32	8,346.41	89,229.73	0.00	0.00	89,229.73	0.00
Insured : HOLIDAY QUALITY FOODS - 98										
HOLIDAY QUALITY FOODS - 98	9	4	5	53,990.82	44,087.01	98,077.83	0.00	0.00	98,077.83	0.00
HOLIDAY QUALITY FOODS - 98	13	3	10	6,735.55	9,069.64	15,805.19	0.00	0.00	15,805.19	0.00
Insured Totals	22	7	15	60,726.37	53,156.65	113,883.02	0.00	0.00	113,883.02	0.00
Insured : KGM HARVESTING - 98										
KGM HARVESTING - 98	1	1	0	9,948.61	6,860.22	16,808.83	0.00	0.00	16,808.83	0.00
Insured Totals	1	1	0	9,948.61	6,860.22	16,808.83	0.00	0.00	16,808.83	0.00
Insured : La Tapatia 98										
La Tapatia 98	9	1	8	11,286.86	4,073.86	15,360.72	0.00	0.00	15,360.72	0.00
La Tapatia 98	15	4	11	30,038.96	6,428.31	36,467.27	0.00	0.00	36,467.27	0.00
Insured Totals	24	5	19	41,325.82	10,502.17	51,827.99	0.00	0.00	51,827.99	0.00
Insured : M. NISHIMORI FARMS - 98										
M. NISHIMORI FARMS - 98	4	2	2	50,741.59	38,164.45	88,906.04	0.00	0.00	88,906.04	0.00
Insured Totals	4	2	2	50,741.59	38,164.45	88,906.04	0.00	0.00	88,906.04	0.00
Insured : MILL VALLEY MARKET, INC. - 98										
MILL VALLEY MARKET, INC. - 98	2	0	2	1,333.14	0.00	1,333.14	0.00	0.00	1,333.14	0.00
Insured Totals	2	0	2	1,333.14	0.00	1,333.14	0.00	0.00	1,333.14	0.00
Insured : MJS, INC - 98/99										
MJS, INC - 98/99	4	1	3	6,574.38	864.35	7,438.73	0.00	0.00	7,438.73	0.00
Insured Totals	4	1	3	6,574.38	864.35	7,438.73	0.00	0.00	7,438.73	0.00
Insured : Natural Selection 1998										
Natural Selection 1998	19	3	16	68,586.52	34,628.20	103,214.72	0.00	0.00	103,214.72	0.00
Insured Totals	19	3	16	68,586.52	34,628.20	103,214.72	0.00	0.00	103,214.72	0.00

Run Date: 07/22/1999
Run Time: 16:02:02

Frontier FSI Dates of Injury in 1998
As of 6/30/1999

Food Service Insurance Mgr's/Frontier Management Summary

06/01/1999 through 06/30/1999

Insured	# of claims	Open	Closed	Paid < SIR	Reserves to date	Incurred < SIR	Paid > SIR	Incurred > SIR	Total Incurred	Reve
Insured : NATURAL SELECTION AZ-98										
NATURAL SELECTION AZ-98	2	0	2	907.80	0.00	907.80	0.00	0.00	907.80	0.0
Insured Totals	2	0	2	907.80	0.00	907.80	0.00	0.00	907.80	0.0
Insured : NATURE QUALITY - 98										
NATURE QUALITY - 98	6	0	6	7,896.79	0.00	7,896.79	0.00	0.00	7,896.79	0.0
Insured Totals	6	0	6	7,896.79	0.00	7,896.79	0.00	0.00	7,896.79	0.0
Insured : NORTH STATE GROCERY - 98										
NORTH STATE GROCERY - 98	13	3	10	50,344.45	29,144.65	79,489.10	0.00	0.00	79,489.10	0.0
NORTH STATE GROCERY - 98	36	8	28	43,680.05	22,006.83	65,686.88	0.00	0.00	65,686.88	0.0
Insured Totals	49	11	38	94,024.50	51,151.48	145,175.98	0.00	0.00	145,175.98	0.0
Insured : ODWALLA - 98										
ODWALLA - 98	19	2	17	25,198.17	14,619.92	39,818.09	0.00	0.00	39,818.09	0.0
Insured Totals	19	2	17	25,198.17	14,619.92	39,818.09	0.00	0.00	39,818.09	0.0
Insured : OLIVERS MARKET										
OLIVERS MARKET	4	2	2	7,677.52	14,055.68	21,733.20	0.00	0.00	21,733.20	0.0
Insured Totals	4	2	2	7,677.52	14,055.68	21,733.20	0.00	0.00	21,733.20	0.0
Insured : ORGANIC FOOD PRODUCTS										
ORGANIC FOOD PRODUCTS	3	1	2	27,312.11	111,987.32	139,299.43	0.00	0.00	139,299.43	0.0
ORGANIC FOOD PRODUCTS	4	2	2	34,497.04	21,887.16	56,384.20	0.00	0.00	56,384.20	0.0
Insured Totals	7	3	4	61,809.15	133,874.48	195,683.63	0.00	0.00	195,683.63	0.0
Insured : PACIFICO BERRY FARMS - 98										
PACIFICO BERRY FARMS - 98	2	1	1	5,088.56	2,348.14	7,436.70	0.00	0.00	7,436.70	0.0
Insured Totals	2	1	1	5,088.56	2,348.14	7,436.70	0.00	0.00	7,436.70	0.0
Insured : PHILIP MCGRATH FARMS - 98										
PHILIP MCGRATH FARMS - 98	1	0	1	807.58	0.00	807.58	0.00	0.00	807.58	0.0
Insured Totals	1	0	1	807.58	0.00	807.58	0.00	0.00	807.58	0.0
Insured : Producers Dairy Products, Inc. - 98										
Producers Dairy Products, Inc. - 98	32	9	23	221,220.66	128,701.85	349,922.51	0.00	0.00	349,922.51	0.0

Food Service Insurance Mgr's/Frontier
Management Summary
06/01/1999 through 06/30/1999

Run Date: 07/22/1999
Run Time: 16:02:02
Frontier FSIM Dates of Injury in 1998
As of 6/30/1999

Insured	# of claims			Paid < SIR	Reserves to date	Incurred < SIR	Paid > SIR	Incurred > SIR	Total Incurred	Recovery
Insured : Producers Dairy Products, Inc. - 98										
Producers Dairy Products, Inc. - 98	20	2	18	27,792.92	9,177.56	36,970.48	0.00	0.00	36,970.48	0.00
Insured Totals	52	11	41	249,013.58	137,879.41	386,892.99	0.00	0.00	386,892.99	0.00
Insured : S.K. FOODS, LP										
S.K. FOODS, LP	9	2	7	10,064.81	36,112.25	46,177.06	0.00	0.00	46,177.06	0.00
Insured Totals	9	2	7	10,064.81	36,112.25	46,177.06	0.00	0.00	46,177.06	0.00
Insured : SANTA CLARA FARMS - 98										
SANTA CLARA FARMS - 98	4	1	3	4,535.77	17,200.80	21,736.57	0.00	0.00	21,736.57	0.00
Insured Totals	4	1	3	4,535.77	17,200.80	21,736.57	0.00	0.00	21,736.57	0.00
Insured : Sierra Citrus Association										
Sierra Citrus Association	22	4	18	89,304.98	24,150.73	113,455.71	0.00	0.00	113,455.71	0.00
Sierra Citrus Association	10	2	8	92,082.18	70,240.32	162,322.50	0.00	0.00	162,322.50	0.00
Insured Totals	32	6	26	181,387.16	94,391.05	275,778.21	0.00	0.00	275,778.21	0.00
Insured : SUNSWEET DRYERS 7/1/98 - 7/1/99										
SUNSWEET DRYERS 7/1/98 - 7/1/99	4	1	3	17,878.38	10,939.51	28,817.89	0.00	0.00	28,817.89	0.00
Insured Totals	4	1	3	17,878.38	10,939.51	28,817.89	0.00	0.00	28,817.89	0.00
Insured : SWISS LOUIS RESTAURANT - 98										
SWISS LOUIS RESTAURANT - 98	2	2	0	15,309.12	35,689.25	50,998.37	0.00	0.00	50,998.37	0.00
Insured Totals	2	2	0	15,309.12	35,689.25	50,998.37	0.00	0.00	50,998.37	0.00
Insured : The Growers Company										
The Growers Company	9	1	8	16,134.20	2,834.44	18,968.64	0.00	0.00	18,968.64	0.00
Insured Totals	9	1	8	16,134.20	2,834.44	18,968.64	0.00	0.00	18,968.64	0.00
Insured : TIERRA LINDA CORP.										
TIERRA LINDA CORP.	4	2	2	25,079.83	34,776.06	59,855.89	0.00	0.00	59,855.89	0.00
Insured Totals	4	2	2	25,079.83	34,776.06	59,855.89	0.00	0.00	59,855.89	0.00
Insured : TOP FLAVOR FARMS-AZ 1999										
TOP FLAVOR FARMS-AZ 1999	2	0	2	309.97	0.00	309.97	0.00	0.00	309.97	0.00
Insured Totals	2	0	2	309.97	0.00	309.97	0.00	0.00	309.97	0.00

Run Date: 07/22/1999
Run Time: 16:02:02
Frontier FSIM Dates of Injury In 1998
As of 6/30/1999

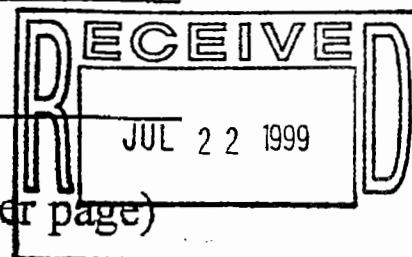
Food Service Insurance Mgr's/Frontier Management Summary 06/01/1999 through 06/30/1999

Insured	# of claims			Paid < SIR		Reserves to date		Incurred < SIR		Paid > SIR		Incurred > SIR		Total Incurred		Recovery	
	Open	Closed															
Insured : V L FARMS - 98																	
V L FARMS - 98	2	1	1	1,946.84	0.00	1,946.84	0.00	1,946.84	0.00	0.00	0.00	0.00	0.00	1,946.84	0.00	0.00	0.00
V L FARMS - 98	1	0	1	6,238.83	77.87	6,160.96	0.00	6,238.83	0.00	0.00	0.00	0.00	0.00	6,238.83	0.00	0.00	0.00
Insured Totals	3	1	2	8,107.80	77.87	8,107.80	0.00	8,185.67	0.00	0.00	0.00	0.00	0.00	8,185.67	0.00	0.00	0.00
Insured : VALLE DORADO AGRI. SERV. - 98																	
VALLE DORADO AGRI. SERV. - 98	3	1	2	67,344.47	29,222.79	67,344.47	29,222.79	96,567.26	0.00	0.00	0.00	0.00	0.00	96,567.26	0.00	0.00	0.00
Insured Totals	3	1	2	67,344.47	29,222.79	67,344.47	29,222.79	96,567.26	0.00	0.00	0.00	0.00	0.00	96,567.26	0.00	0.00	0.00
Grand Totals	478	135	343	2,349,462.68	1,517,430.00	2,349,462.68	1,517,430.00	3,866,892.68	0.00	0.00	0.00	204,012.34	0.00	4,070,905.02	0.00	0.00	0.00

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F.S.I.M.**Food Services Insurance Managers, Inc.****Fax # (916) 797-4950**

====FAX====

NAME: Ms. Sue Cole**COMPANY:** Frontier**FAX #:** (914) 796-1005**FROM:** George Haggian# of Pages 5 (including this cover page)**DATE:** 7-22-99**COMMENTS:** please see attached information you requested.
ThanksGeorge

**If you do not receive all of the pages indicated above, please
give us a call at (916) 797-4925.

Account Name	Effec. Date	New Renewal	E.A.P.	Policy #	Gov. Class
Goldberg & Solovy	8/1/98	N	\$ 119,940	W205000155	8018
Poplar Farms	8/1/98	N	\$ 109,685	W205000157	79
Eclipse Berry Farms	8/1/98	N	\$ 172,000	W205000156	79
Rio Mesa Farms	8/1/98	N	\$ 119,738	W205000158	79
Odwalla	9/1/98	N	\$ 566,360	W205000149	2163
Coronet Foods, Inc	9/1/98	N	\$ 84,253	W205000151	6504
KGM Harvesting	9/1/98	N	\$ 64,105	W205000152	0172
Gudpak	9/30/98	N	\$ 166,400	W205000159	0172
✓ Cal West Farming	9/18/98	R	\$ 695,492	W205000160	0172
Athens Baking	10/1/98	N	\$ 47,574	W205000154	2003
MJS	10/1/98	N	\$ 190,409	W205000153	0172
Progresso Harvesting	11/1/98	N	\$ 39,613	W205000161	0079
Rancho Buena Vista	11/1/98	N	\$ 39,613	W205000163	0079
Olivers Market	11/1/98	N	\$ 59,907	W205000164	8006
Tierra Linda Corp.	11/1/98	N	\$ 132,488	W205000165	0172
Safari Harvesting	11/1/98	N	\$ 39,613	W205000162	0079
Mill Valley Market	9/1/98	N	\$ 25,077	W205000150	8017
LA Poultry	11/30/98	N	\$ 101,689	W205000166	8021
Amy's Kitchen	12/1/98	N	\$ 191,584	W205000167	6504
J & A Lukrich	1/1/99	N	\$ 14,622	W205000168	0016
Crum & Crum	1/1/99	N	\$ 85,191	W205000169	7219
Sharer Harvest	1/1/99	N	\$ 60,775	W205000170	0172
Adobe Packing	1/1/99	N	\$ 216,608	W205000171	0172
Guerra's Farming	1/1/99	N	\$ 92,504	W205000172	0172
Dreisbach Ent.	1/1/99	N	\$ 107,789	W205000174	9015
Watsonville Coast Pro.	1/1/99	N	\$ 52,533	W205000175	8018
Anacapa Berry Farms	1/1/99	N	\$ 242,730	W205000186	0079

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Account	Effec.	New	E.A.P.	Policy #	Gov.
Name	Date	Renewal			Class
Ruby Farms	1/1/99	N	\$ 132,322	W205000187	0079
Manzanita Berry	1/1/99	N	\$ 132,983	W205000188	0079
Rio Farms	1/1/99	N	\$ 417,375	W205000189	0172
DB Specialty Farms	1/1/99	N	\$ 124,319	W205000190	0079
Bagshaw Co.	1/1/99	N	\$ 10,152	W205000191	8292
Carlyle Farming	1/1/99	N	\$ 2,371	W205000192	0016
Howeling Nurseries	1/1/99	N	\$ 16,822	W205000193	0172
West Coast Harvesting	1/1/99	N	\$ 229,732	W205000194	2111
Naturipe Harvesting	1/1/99	N	\$ 60,875	W205000176	2108
Sierra Citrus Assoc.	1/1/99	R	\$ 104,083	W205000177	0016
Coachella Valley Citrus	1/1/99	R	\$ 346,315	W205000178	7219
Growers Transport	1/1/99	R	\$ 47,962	W205000179	0016
Dunlap Management	1/1/99	R	\$ 36,358	W205000180	0172
Geo. Peery & Sons	1/1/99	R	\$ 64,182	W205000181	0172
Fresh West Harvesting	1/1/99	R	\$ 134,276	W205000182	0079
V&L Farms	1/1/99	R	\$ 64,468	W205000183	6504
Nature Quality	1/1/99	R	\$ 60,875	W205000184	0036
Bar 20 Dairy	1/1/99	R	\$ 42,911	W205000185	2063
Producers Dairy	1/1/99	R	\$ 193,292	W205000199	6504
Coronet Foods (AZ)	1/1/99	N	\$ 18,916	W205000195	0017
KGM (AZ)	1/1/99	N	\$ 11,996	W205000198	0079
Hueneeme Berry	1/1/99	N	\$ 12,542	W205000197	0172
CaliMex	1/28/99	N	\$ 37,977	W205000201	0017
Hills Harvesting	2/1/99	N	\$ 22,683	W205000203	8018
VegPacker, Inc (AZ)	3/1/99	N	\$ 52,121	W205000202	8232
Tony's Fine Foods	4/1/99	N	\$ 191,546		
Sunland Garden	4/1/99	N	\$ 39,655		

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Account	Effect	New	E.A.P.	Policy #	Gov.
Name	Date	Renewal			Class
Frisco Baking Co.	4/1/99	N	\$ 86,374	W205000204	2003
Goglian Bakeries	4/1/99	N	\$ 160,983	W205000205	2003
Eaglet Pride Co	4/25/99	N	\$ 48,205	W205000206	0172
Escamillia	4/5/99	R	\$ 933,282	W205000207	0172
Organic Food Products	5/1/99	R	\$ 25,607	W205000208	6504
GVE	5/1/99	R	\$ 122,715	W205000209	0172
SK Foods	5/1/99	R	\$ 131,602	W205000210	2111
Tri-Cal	4/30/99	N	\$ 205,303	W205000211	0050
Los Burritos	5/1/99	N	\$ 28,587	W205000212	9079
IC & Sons Farm Labor	5/1/99	N	\$ 39,275	W205000213	0172
Vec Farms	5/17/99	N	\$ 2,108	W205000214	0172
Central Cold Storage	6/1/99	N	\$ 147,319	W205000216	
Sunsweet Dryers	7/1/99	R	\$ 119,493	W205000219	
E&L Avila	7/1/99	N	\$ 152,072	W205000223	
Natural Selection Foods	7/1/99	R	\$ 278,801	W205000217	
Escamillia	7/1/99	R	\$ 882,040	W205000218	
The Growers Company	7/1/99	R	\$ 438,392	W205000220	
Fulfillment Systems	7/1/99	R	\$ 95,558	W205000225	
Desert Packing	7/1/99	R	\$ 259,033	W205000221	
Boskovitch	7/1/99	N	\$ 551,212	W205000224	
F & T Labor	7/1/99	N	\$ 83,160	W205000226	
4 Seasons	7/1/99	N	\$ 142,035	W205000227	
Luna Fertilizer	7/1/99	R	\$ 20,428	W205000228	
Bob Jones Ranch	7/1/99	R	\$ 1,829	W205000229	
Conroy Berry Farms	7/1/99	R	\$ 64,550	W205000230	
Hasagawa	7/1/99	R	\$ 31,197	W205000231	
BJ Harvesting	7/1/99	R	\$ 82,970	W205000232	

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F.S.I.M. ISSUANTE LU6 "IN FORCE"

<u>Account</u>	<u>Effic.</u>	<u>New</u>	<u>E.A.P.</u>	<u>Policy #</u>	<u>Gov.</u>
<u>Name</u>	<u>Date</u>	<u>Renewal</u>			<u>Class</u>
Santa Lucia	7/1/99	N	\$ 69,679	W205000233	
Golden West Ind.	6/30/99	N	\$ 38,987	W205000234	
Swiss Louis Rest.	7/1/99	R	\$ 33,683	W205000235	
Rancho Foods	7/1/99	N	\$ 71,210	W205000236	
Bien Nacido	7/1/99	R	\$ 94,200	W205000237	
United Packing	7/1/99	N	\$ 88,490	W205000238	
Vasquez Bros.	7/1/99	N	\$ 69,168	W205000222	
Nishimori	7/1/99	R	\$ 142,618	W205000239	
Hiji	7/1/99	R	\$ 285,268	W205000240	
Rancho Guadalupe	7/1/99	R	\$ 57,650	W205000241	
Philip McGrath Farms	7/1/99	R	\$ 8,508	W205000242	
Casper Berry Farms	7/1/99	R	\$ 55,900	W205000243	
Martinez Farms	7/1/99	R	\$ 68,430	W205000244	
Fukutomi Farms	7/1/99	R	\$ 42,018	W205000245	
Santa Clara Farms	7/1/99	R	\$ 88,797	W205000246	
		1999	9830597		
TOTALS			\$ 12,796,137		

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F.S.I.M.
Food Services Insurance Managers, Inc.
Fax # (916) 797-4950

===FAX===

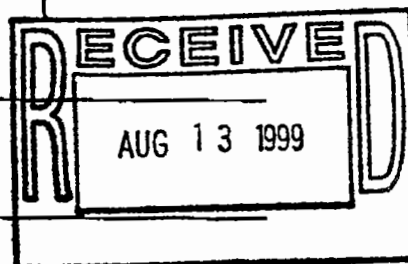
RUSH

NAME: Sue Cole

COMPANY: Frontier Ins. Company

FAX #: (914) 796-1005

FROM: George Hagosian



of Pages 4 (including this cover page)

DATE: Aug 12, 1999

COMMENTS: Attached is "Declined" Log. Please note that this is just for "complete"/actual submissions. It does not reflect declines given over the phone while discussing a potential submission. Nor does it reflect a decline given immediately following an Underwriting "Needs Assessment" (sometimes done prior to actual or complete submission) or a pre-submission/quote loss control survey. Call if you have any questions.

Thanks

****If you do not receive all of the pages indicated above, please give us a call at (916) 797-4925.**

FSIM Declined Business

<u>Account</u>	<u>Effect</u>	<u>Declination</u>	<u>Rational for Declination</u>
<u>Name</u>	<u>Date</u>	<u>Date</u>	
Warwick	Jun-99	5/11/99	Premium Vs. Exposure
WSF Beverage	Jun-99		Premium Vs. Exposure
Tagawa West	Jun-99	5/11/99	Poor Loss Data-Old Valuation
Bernardo/Tocchetto	Jun-99		Premium Vs. Exposure
Plantel Nurseries	Jul-99	6/8/99	Adverse loss history
3 Ring Restaurant	Jul-99		Premium Vs. Exposure
The Waterfront	Jul-99		Premium Vs. Exposure
Firewood Café	Jul-99		Premium Vs. Exposure
Mels Drive In	Jul-99		Premium Vs. Exposure
Alioto Fish Co.	Jul-99		Adverse loss history
The Fly Trap	Jul-99		Premium Vs. Exposure
Olema Inn B&B	Jul-99		Class/Exposure
Andrews Hotel	Jul-99		Class/Exposure
City of Paris	Jul-99		Premium Vs. Exposure
Bruno's Market	Jul-99		Premium Vs. Exposure
Herrera Packing Co.	Jul-99		Adverse loss history
Kuhn Hay	Jul-99	6/14/99	Tied to Kuhn Farms
Kuhn Farms	Jul-99	6/14/99	Losses & Broker doesn't know acct.
KP Dairy	Jul-99	6/14/99	Tied to Kuhn Farms
The Inn at the Tides	Jul-99		Class/Exposure
The Graduate Rest.	Jul-99		Premium Vs. Exposure
Carchanila	Jul-99		Adverse loss history
Santa Lucia Harvesting	Jul-99		Possible Gap in Coverage
Coach Farms	Jun-99		Lack of complete loss data
Arizona Son Harvesting	Jul-99	6/22/99	Adverse loss history
Rick Young Ranches	Jul-99		Premium Vs. Exposure
Critello Olive Oil	Aug-99		Size
Shelter Cove Lodge	Sep-99	7/20/99	Class/Exposure

FSIM Declined Business

<u>Account</u>	<u>Effect</u>	<u>Declination</u>	<u>Rational for Declination</u>
<u>Name</u>	<u>Date</u>	<u>Date</u>	
Antonio Areland	Sep-99		Premium Vs. Exposure
National Cold Storage	Sep-99		Adverse loss history
La Pizza Loca	Jul-99		Loss History & Construction expos.
Clinton's Rest.	Jul-99		Adverse loss history
Arnord's Rest.	Jul-99		Poor '96 Yr, Low EAP
Valley Harvesting Ca.	Mar-99		Adverse loss history
Cal West	5/1/99	2/1/99	Non-Renewal Losses
Spenders	7/1/99	5/1/99	Non-Renewal Losses
Tandori Nites	May-99	5/7/99	Prem. Vs. Exposure
The Villa Rest.	6/1/99	5/14/99	Prem. Vs. Exposure/97 Yr losses
Bobby Rubinos	Jul-99	Jun-99	Premium Vs. Exposure
EZ Labor	Jul-99	6/10/99	Lack of complete loss data
Adrienne's Gourmet Food	Jan-99	12/22/98	Adverse loss history
Airdrome Orchards	Apr-98	3/24/98	No Mgmt. Commitment to Safety
Alpine Meats	Jan-98	12/19/97	Losses & Financial Concerns
Freedom Foods	Jan-98	11/7/97	Size
Chase National KIWI	Jan-98	11/6/97	Adverse loss history
La Felce	Apr-98	3/18/99	Size
Hallmark Meat Packing	Feb-99	1/27/99	Late Submission, Lack of time
Polli Allabrace	May-99	4/15/99	Premium Vs. Exposure
Café Rocco	May-99	4/15/99	Premium Vs. Exposure
Pinnetti LLC	May-99	4/15/99	Premium Vs. Exposure
Moss Beach Distillery	Jun-99	4/6/99	Adverse loss history
Central Coast Sod	May-99	4/15/99	Premium Vs. Exposure
Guertras' Lettuce Harvesting	Apr-99	3/11/99	Adverse loss history
Rulli Italian Pastry	Mar-99	2/18/99	Premium Vs. Exposure
Samos LLC	Oct-98		Financial Concerns
All Seasons Flowers	Mar-99		Losses, Lack of time

FSIN Declined Business

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F.S.I.M.
Food Services Insurance Managers, Inc.
Fax # (916) 797-4950

===FAX===

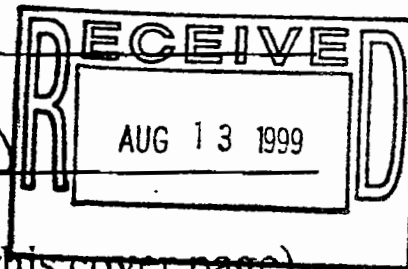
PUSH

NAME: Sue Cole

COMPANY: Frontier Ins. Company

FAX #: (914) 796-1005

FROM: George Hagosian



of Pages 5 (including this cover page)

DATE: Aug 12, 1999

COMMENTS: Attached is "IN FORCE" ISSUANCE LOR
you requested.
Should you have any questions
do not hesitate to call.

Thank,
George

****If you do not receive all of the pages indicated above, please
give us a call at (916) 797-4925.**

F.S.M. "In Force" LOG

<u>Account</u>	<u>Effec.</u>	<u>New</u>	<u>E.A.P.</u>	<u>Policy #</u>	<u>Gov.</u>
<u>Name</u>	<u>Date</u>	<u>Renewal</u>			<u>Class</u>
Odwalla	9/1/98	N	\$ 566,360	W205000149	2163
Coronet Foods, Inc	9/1/98	N	\$ 84,253	W205000151	6504
KGM Harvesting	9/1/98	N	\$ 64,105	W205000152	0172
Gudpak	9/30/98	N	\$ 166,400	W205000159	0172
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Rancho Buena Vista	11/1/98	N	\$ 39,613	W205000163	0079
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Tierra Linda Corp.	11/1/98	N	\$ 132,488	W205000165	0172
Safari Harvesting	11/1/98	N	\$ 39,613	W205000162	0079
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Adobe Packing	1/1/99	N	\$ 216,608	W205000171	0172
Guerra's Farming	1/1/99	N	\$ 92,504	W205000172	0172
Dreisbach Ent.	1/1/99	N	\$ 107,789	W205000174	9015
Watsonville Coast Pro.	1/1/99	N	\$ 52,533	W205000175	8018
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Manzanita Berry	1/1/99	N	\$ 132,983	W205000188	0079
Rio Farms	1/1/99	N	\$ 417,375	W205000189	0172
DB Specialty Farms	1/1/99	N	\$ 124,319	W205000190	0079

F.S.M. "In Force" 106

<u>Account</u>	<u>Efec.</u>	<u>New</u>	<u>E.A.P.</u>	<u>Policy #</u>	<u>Gov. Class</u>
<u>Name</u>	<u>Date</u>	<u>Renewal</u>			
Bagshaw Co.	1/1/99	N	\$ 10,152	W205000191	8292
Carlyle Farming	1/1/99	N	\$ 2,371	W205000192	0016
Howling Nurseries	1/1/99	N	\$ 16,822	W205000173	0172
West Coast Harvesting	1/1/99	N	\$ 229,732	W205000193	0172
Nature Harvesting	1/1/99	N	\$ 60,875	W205000194	2111
Sierra Citrus Assoc.	1/1/99	R	\$ 104,083	W205000176	2108
Coachella Valley Citrus	1/1/99	R	\$ 346,315	W205000177	0016
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Producers Dairy	1/1/99	R	\$ 193,292	W205000185	2063
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Sunland Garden	4/1/99	N	\$ 39,655	W205000202	8232
Frisco Baking Co.	4/1/99	N	\$ 86,374	W205000204	2003
Goglianian Bakeries	4/1/99	N	\$ 160,983	W205000205	2003
Eaglet Pride Co	4/25/99	N	\$ 48,205	W205000206	0172
Escartilla	4/5/99	R	\$ 933,282	W205000207	0172

F.S.M. "In Force" Log

<u>Account</u>	<u>Effec.</u>	<u>New</u>	<u>E.A.P.</u>	<u>Policy #</u>	<u>Gov.</u>
<u>Name</u>	<u>Date</u>	<u>Renewal</u>			<u>Class</u>
Organic Food Products	5/1/99	R	\$ 25,607	W205000208	6504
GVE	5/1/99	R	\$ 122,715	W205000209	0172
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Tri-Cal	4/30/99	N	\$ 205,303	W205000211	0050
Los Burritos	5/1/99	N	\$ 28,587	W205000212	9079
I C & Sons Farm Labor	5/1/99	N	\$ 39,275	W205000213	0172
Vec Farms	5/17/99	N	\$ 2,108	W205000214	0172
Central Cold Storage	6/1/99	N	\$ 147,319	W205000216	2177
Sunsweet Dryers	7/1/99	R	\$ 119,493	W205000219	2102
E&L Avila	7/1/99	N	\$ 152,072	W205000223	0172
Natural Selection Foods	7/1/99	R	\$ 278,801	W205000217	0172
Escamilla	7/1/99	R	\$ 882,040	W205000218	0172
The Growers Company	7/1/99	R	\$ 438,392	W205000220	0172
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Boskovitch	7/1/99	N	\$ 551,212	W205000224	0172
F & T Labor	7/1/99	N	\$ 83,160	W205000226	0172
4 Seasons	7/1/99	N	\$ 142,035	W205000227	0017
Luna Fertilizer	7/1/99	R	\$ 20,428	W205000228	0050
Bob Jones Ranch	7/1/99	R	\$ 1,829	W205000229	8006
Conroy Berry Farms	7/1/99	R	\$ 64,550	W205000230	0079
Hasagawa	7/1/99	R	\$ 31,197	W205000231	0079
BJ Harvesting	7/1/99	R	\$ 82,970	W205000232	0016
Santa Lucia	7/1/99	N	\$ 69,679	W205000233	0172
Golden West Ind.	6/30/99	N	\$ 38,987	W205000234	0034
Swiss Louis Rest.	7/1/99	R	\$ 33,683	W205000235	9079
Rancho Foods	7/1/99	N	\$ 71,210	W205000236	8021

<u>Account</u>	<u>Efec.</u>	<u>New</u>	<u>E.A.P.</u>	<u>Policy #</u>	<u>Gov.</u>
<u>Name</u>	<u>Date</u>	<u>Renewal</u>		<u>Policy #</u>	<u>Class</u>
Bien Nacido	7/1/99	R	\$ 94,200	W205000237	0040
United Packing	7/1/99	N	\$ 88,490	W205000238	0172
Vasquez Bros.	7/1/99	N	\$ 69,168	W205000222	0172
Nishinori	7/1/99	R	\$ 142,618	W205000239	0005
Hiji	7/1/99	R	\$ 285,268	W205000240	0172
Rancho Guadaluca	7/1/99	R	\$ 57,650	W205000241	0016
Philip McGrath Farms	7/1/99	R	\$ 8,508	W205000242	0016
Casper Berry Farms	7/1/99	R	\$ 55,900	W205000243	0079
Martinez Farms	7/1/99	R	\$ 68,430	W205000244	0079
Fukutomi Farms	7/1/99	R	\$ 42,018	W205000245	0079
Santa Clara Farms	7/1/99	R	\$ 88,797	W205000246	0016
DV Harvesting	7/1/99	R	\$ 99,421	W205000247	0016
Channel Island Berry	7/1/99	R	\$ 62,597	W205000248	0079
Pacifico Berry	7/1/99	R	\$ 152,236	W205000249	0079
Courty Gold Farms	7/1/99	R	\$ 187,665	W205000250	0016
Goldberg & Solovy	8/1/99	R	\$ 168,106	W205000251	8018
TOTALS			\$ 12,944,799		

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SENT VIA FAX AND CERTIFIED MAIL

GERALD J. STEIMERS

November 16, 1999

Mr. Gerald J. Steimers, AIC
Vice President, Frontier Insurance Company
195 Lake Louise Marie Road
Rock Hill, NY 12775-8000

RE: **Termination of Claims Service Agreement**

Dear Mr. Steimers:

Receipt of your correspondence of November 10, 1999 notifying termination of the Claims Service Agreement between Risk Management Services, Inc. and Frontier Insurance Company is hereby acknowledged.

The attempt by Frontier Insurance (hereinafter "Frontier") to terminate its service agreement with Risk Management Services, Inc. (hereinafter "FSIM") raises serious and significant concerns on our part. These concerns included our mutual clients' ongoing interests in reducing claims costs, the future handling of existing and potential claims against our clients and the adverse publicity resulting from the termination.

As you are aware, after the Claims Service Agreement was entered into in January of 1998, a significant effort was put forth to develop a program to market the Frontier product coupled with the unique services provided by FSIM. (As you know, FSIM purchased Risk Management Services, Inc. in January of 1999, assuming the obligations and benefits of Risk Management Services, Inc. under the subject agreement.)

The marketing program developed by Dwight Halvorson Insurance Services was successful in selling a significant amount of Frontier policies. In addition to Dwight Halvorson Insurance Services, other independent brokers also utilized the Frontier/FSIM marketing program to generate sales of Frontier's product. To date, approximately 12 million dollars in premium has been generated to Frontier by direct sales. Another 14 million dollars in premium has been generated under the Captive program underwritten by Frontier.

Without question, the vast majority of clients purchasing policies under the program relied on representations of the service provided by the FSIM. FSIM has developed a

unique approach to workers compensation claims management which has provided clients with excellent loss control and superior claims service program for both the captive program and Frontier primary business. FSIM's approach to risk management and claims management is unique in the industry. This factor was, without question, essential in generating in the aforementioned sales.

It is important to note that we incurred substantial costs in gearing up to handle the business generated by Frontier primary. During this process, I had numerous discussions with Kevin Jefferey, Senior Vice President, and Ed Wilson, Vice President in charge of the Frontier primary operations. These gentlemen agreed that in light of the costs of adding staff and equipment and other related issues that we would be given a one-year notice provision for termination of the agreement. This agreement is memorialized in a letter to Kevin Jefferey (see attached). Mr. Wilson was copied on that letter, acknowledged its receipt and confirmed in a subsequent letter Kevin's and his acceptance of these terms. As point of fact, Frontier would not have been able to write primary business at all in this state had we not, on very short notice, changed our operation substantially to accommodate handling claims generated by accounts written outside the FSIM program.

Subsequent to FSIM's assumption of the Frontier business, four audits were conducted. The first three audits all resulted in excellent reviews on behalf of FSIM. The last audit was conducted in August of this year and we are yet to receive the results from Frontier. Throughout the term of this relationship, FSIM has worked closely with Frontier personnel in the review of claims handling procedures and the setting of appropriate reserves.

Your intentions as outlined in your letter are, therefore, not acceptable to us. We do, however, wish to resolve this amicably and would welcome a conference call to discuss this matter and reach a mutually satisfactory resolution. Please contact us at your earliest convenience. If we have not heard back from you within 10 days, we will assume you have rethought your position based on the facts of this letter and wish us to proceed on a business as usual basis.

In closing, we would also respectfully point out that we have been as cooperative and understanding as possible with other decisions Frontier has made relative to Workers Compensation in California, specifically its withdrawal from the market. Frontier's actions in this regard have caused us and our policyholders substantial difficulty, not the least of which has been a tremendous blow to our credibility as we were Frontier's strongest supporter. We had been assured by Mr. Jefferey, as the Executive in charge of the California Workers Compensation operations, that Frontier was committed to a 3 to 5 year plan in this state. Further, Mr. Jefferey was in negotiations to purchase 51% of FSIM over a period of six months up to the point of his departure from the company. So all that has occurred in this regard has been confusing at best. While we understand that the change in management has resulted in certain philosophical changes, we're sure you can appreciate that the abruptness of the actions related to these changes have had

numerous and irreversible consequences already. All of these problems would be severally exacerbated by now reneging on the product we sold our mutual customers.

I'm sure you want to avoid these further complications that almost certainly would result from these actions as much as we do. We look forward to hearing from you so we can resolve this matter to our mutual satisfaction.

Very truly yours,

A handwritten signature in black ink, appearing to read "Dwight J. Halvorson". The signature is fluid and cursive, with the first name "Dwight" being more prominent.

Dwight J. Halvorson
Dwight Halvorson Insurance Services
Food Service Insurance Managers

DJH/sah
Attachment

cc: Mark Sioma
Harry Rhulen

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NOV. -30*99 (TUE) 15:21

D. H. I. S.

TEL: 916 773 0402

P. 001



FOOD SERVICE INSURANCE MANAGERS

NAME: MR. GERALD STEINERSCOMPANY: FRONTIER INSURANCE GROUPFAX #: 914-791-7991FROM: DWIGHT HALVORSON# of Pages 7 [including this cover page]Date: 11/30/99Comments: _____

***If you do not receive all of the pages indicated above, please give us a call at
(916) 773-0206.*

NOV. -30' 99 (TUE) 15:22

D. H. I. S.

TEL: 916 773 0402

P. 002



SENT VIA FAX AND CERTIFIED MAIL

November 30, 1999

Mr. Gerald J. Steimers, AIC
Vice President
Frontier Insurance Company
195 Lake Louise Marie Road
Rock Hill, NY 12275-8000

RE: Termination of Claims Service Agreement

Dear Mr. Steimers:

This is a follow-up to my letter dated November 16, 1999 which was faxed to you as well as sent certified mail and received in your office on November 19, 1999 (see attachments). To date, I have not received your response.

Since we have not heard back from you within 10 days of the above referenced letter, we assume you have rethought your position and wish us to proceed on a business as usual basis. In the absence of hearing from you by the close of business this week, we assume you wish to enforce the language of this letter.

Again, we look forward to hearing from you so we can resolve this matter to our mutual satisfaction. Thank you for your cooperation in this matter.

Sincerely,

Dwight J. Halvorson
Chief Executive Officer
Dwight Halvorson Insurance Services
Food Service Insurance Managers

DJH/sah
Attachments

cc: Mark Sioma
Harry Rhulen

FOOD SERVICE INSURANCE MANAGERS, INC.
3300 DOUGLAS BLVD., SUITE 295
ROSEVILLE, CA 95661
(916) 773-0208

BANK OF AMERICA
Roseville Main Office
2221 Douglas Blvd., Roseville, CA 95661
11-35/1210

NO. 0000129
129

PAY TO THE ORDER OF TWO HUNDRED SEVENTY-FOUR THOUSAND SIX HUNDRED THIRTY-NINE DOLLARS and 36 CENTS DATE 09/15/98 AMOUNT \$274,639.36*

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775

TRUST CHECKING ACCOUNT

⑈000129⑈ ⑆121000358⑆ 01208⑈04267⑈

274639.36

FOOD SERVICE INSURANCE MANAGERS, INC.
3300 DOUGLAS BLVD., SUITE 295
ROSEVILLE, CA 95661
(916) 773-0208

BANK OF AMERICA
Roseville Main Office
2221 Douglas Blvd., Roseville, CA 95661
11-35/1210

NO. 0000142
142

PAY TO THE ORDER OF THREE HUNDRED FIFTY-FOUR THOUSAND EIGHT HUNDRED THIRTY-TWO DOLLARS and 17 CENTS DATE 10/12/98 AMOUNT \$354,832.17*

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775

TRUST CHECKING ACCOUNT

⑈000142⑈ ⑆121000358⑆ 01208⑈04267⑈

354832.17

FOOD SERVICE INSURANCE MANAGERS, INC.
3300 DOUGLAS BLVD., SUITE 295
ROSEVILLE, CA 95661
(916) 773-0208

BANK OF AMERICA
Roseville Main Office
2221 Douglas Blvd., Roseville, CA 95661
11-35/1210

NO. 0000156
156

PAY TO THE ORDER OF ONE HUNDRED EIGHTY-SIX THOUSAND FIVE HUNDRED SEVENTY-EIGHT DOLLARS and 22 CENTS DATE 11/11/98 AMOUNT \$186,578.22*

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775

TRUST CHECKING ACCOUNT

⑈000156⑈ ⑆121000358⑆ 01208⑈04267⑈

186578.22

FOOD SERVICE INSURANCE MANAGERS, INC.
3300 DOUGLAS BLVD., SUITE 295
ROSEVILLE, CA 95661
(916) 773-0208

BANK OF AMERICA
Roseville Main Office
2221 Douglas Blvd., Roseville, CA 95661
11-35/1210

NO. 0000172
171

PAY TO THE ORDER OF ONE HUNDRED TWENTY-SIX THOUSAND NINE HUNDRED FORTY-FOUR DOLLARS and 32 CENTS DATE 12/15/98 AMOUNT \$226,944.32*

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775

TRUST CHECKING ACCOUNT

FIC/FSIM 000786

⑈000172⑈ ⑆121000358⑆ 01208⑈04267⑈

FOOD SERVICE INSURANCE MANAGERS, INC.
3300 DOUGLAS BLVD., SUITE 2
ROSEVILLE, CA 95661
(916) 773-0206

BANK OF AMERICA
Roseville Main Office
2221 Douglas Blvd., Roseville, CA 95661
11-35/1210

NO. 0000182
182

PAY

ONE HUNDRED SEVENTY-FOUR THOUSAND TWO HUNDRED SEVENTY DOLLARS and 81 CENTS
ORDER OF

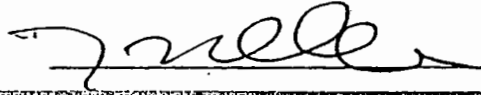
DATE

AMOUNT

01/14/99

\$174,270.81*
TRUST CHECKING ACCOUNT

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775



⑈000182⑈ ⑆121000358⑆ 01208⑈04267⑈

⑈0017427081⑈
27836

FOOD SERVICE INSURANCE MANAGERS, INC.
3300 DOUGLAS BLVD., SUITE 2
ROSEVILLE, CA 95661
(916) 773-0206

BANK OF AMERICA
Roseville Main Office
2221 Douglas Blvd., Roseville, CA 95661
11-35/1210

NO. 0000188
188

PAY

TWO HUNDRED SIXTY-THREE THOUSAND TWO HUNDRED SIXTY-FOUR DOLLARS and 51 CENTS
ORDER OF

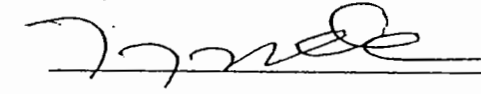
DATE

AMOUNT

02/18/99

\$263,264.51*
TRUST CHECKING ACCOUNT

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775



⑈000188⑈ ⑆121000358⑆ 01208⑈04267⑈

⑈0026326451⑈
2785

FOOD SERVICE INSURANCE MANAGERS, INC.
3300 DOUGLAS BLVD., SUITE 2
ROSEVILLE, CA 95661
(916) 773-0206

BANK OF AMERICA
Roseville Main Office
2221 Douglas Blvd., Roseville, CA 95661
11-35/1210

NO. 0000193
193

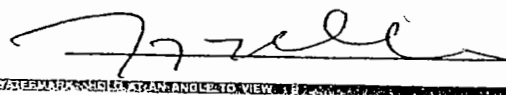
PAY

THREE HUNDRED EIGHTY-FIVE THOUSAND ONE HUNDRED THIRTY DOLLARS and 43 CENTS
ORDER OF

03/15/99

\$385,103.43*
TRUST CHECKING ACCOUNT

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775



⑈000193⑈ ⑆121000358⑆ 01208⑈04267⑈

⑈0038510343⑈
2785

FOOD SERVICE INSURANCE MANAGERS, INC.
3300 DOUGLAS BLVD., SUITE 2
ROSEVILLE, CA 95661
(916) 773-0206

BANK OF AMERICA
Roseville Main Office
2221 Douglas Blvd., Roseville, CA 95661
11-35/1210

NO. 0000196
196

PAY

THREE HUNDRED SEVENTY-FIVE THOUSAND SIX HUNDRED NINETY-FOUR DOLLARS and 29 CENTS
ORDER OF

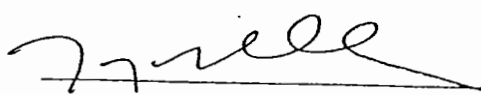
DATE

AMOUNT

04/16/99

\$375,694.29*
TRUST CHECKING ACCOUNT

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775



⑈000196⑈ ⑆121000358⑆ 01208⑈04267⑈

⑈0037569429⑈

FIC/FSIM 000787

FOOD SERVICE INSURANCE MANAGERS, INC.

3300 DOUGLAS BLVD., SUITE
ROSEVILLE, CA 95661
(916) 773-0206BANK OF AMERICA
Roseville Main Office
2221 Douglas Blvd., Roseville, CA 95661

11-35/1210

NO.

000021
202

PAY

TO THE HUNDRED NINETY-SIX THOUSAND TWO HUNDRED FIFTY-SIX DOLLARS and 34 CENTS
ORDER OF

DATE

AMOUNT

05/14/99

\$296,256.30*
TRUST CHECKING ACCOUNTFRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775*Replaced
w/ 5/27 WIRE
Transfer*

⑈000202⑈ ⑆121000358⑆ 01208⑈04267⑈

⑈0029625630⑈

FOOD SERVICE INSURANCE MANAGERS, INC.

3300 DOUGLAS BLVD., SUITE
ROSEVILLE, CA 95661
(916) 773-0206BANK OF AMERICA
Roseville Main Office
2221 Douglas Blvd., Roseville, CA 95661

11-35/1210

NO.

000020
204

PAY

TO THE HUNDRED NINETY THOUSAND THREE HUNDRED TWENTY-FOUR DOLLARS and 66 CENTS
ORDER OF

DATE

AMOUNT

06/09/99

\$290,324.66*
TRUST CHECKING ACCOUNTFRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775*Robert J. Johnson*

⑈000204⑈ ⑆121000358⑆ 01208⑈04267⑈

⑈0029032466⑈

FOOD SERVICE INSURANCE MANAGERS, INC.

3300 DOUGLAS BLVD., SUITE
ROSEVILLE, CA 95661
(916) 773-0206BANK OF AMERICA
Roseville Main Office
2221 Douglas Blvd., Roseville, CA 95661

11-35/1210

NO.

000023
234

PAY

TO FOUR HUNDRED SEVENTEEN THOUSAND EIGHT HUNDRED THIRTY DOLLARS and 60 CENTS
ORDER OF

DATE

AMOUNT

11/15/99

\$417,830.60*
TRUST CHECKING ACCOUNTFRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775*[Signature]*

⑈000234⑈ ⑆121000358⑆ 01208⑈04267⑈

⑈0041783060⑈

FOOD SERVICE INSURANCE MANAGERS, INC.

3300 DOUGLAS BLVD., SUITE
ROSEVILLE, CA 95661
(916) 773-0206BANK OF AMERICA
Roseville Main Office
2221 Douglas Blvd., Roseville, CA 95661

11-35/1210

NO.

000024
249

PAY

TO EIGHT HUNDRED SEVENTY-EIGHT THOUSAND SEVEN HUNDRED TWENTY-SEVEN DOLLARS and 43 CENTS
ORDER OF

DATE

AMOUNT

12/14/99

\$878,727.43*
TRUST CHECKING ACCOUNTFRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775

FIC/FSIM 000788

⑈000249⑈ ⑆121000358⑆ 01208⑈04267⑈

⑈0087872743⑈

ORIGINAL DOCUMENT IS PRINTED ON CHEMICAL REACTIVE PAPER & HAS A MICROPRINTED BORDER

FOOD SERVICE INSURANCE MANAGERS, INC.

3300 DOUGLAS BLVD., SUITE 295
ROSEVILLE, CA 95661
(916) 773-0208BANK OF AMERICA
Roseville Main Office #0120
2221 Douglas Blvd., Roseville, CA 95661

11-35/1210

NO.

0000280
280

PAY

TO THREE HUNDRED SEVENTEEN THOUSAND NINE HUNDRED SIXTY-FIVE DOLLARS and 62 CENTS
ORDER OF

DATE

AMOUNT

03/13/00

9317,965.62*

TRUST CHECKING ACCOUNT

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775THE REVERSE SIDE OF THIS DOCUMENT INCLUDES AN ARTIFICIAL WATERMARK • HOLD AT AN ANGLE TO VIEW •
"000280" 1210003581 01208004267

ORIGINAL DOCUMENT IS PRINTED ON CHEMICAL REACTIVE PAPER & HAS A MICROPRINTED BORDER

FOOD SERVICE INSURANCE MANAGERS, INC.

3300 DOUGLAS BLVD., SUITE 295
ROSEVILLE, CA 95661
(916) 773-0208BANK OF AMERICA
Roseville Main Office #0120
2221 Douglas Blvd., Roseville, CA 95661

11-35/1210

NO.

0000281
281

PAY

TO EIGHTY-EIGHT THOUSAND TWO HUNDRED SEVENTY-FIVE DOLLARS and 20 CENTS
ORDER OF

DATE

AMOUNT

03/13/00

988,275.20*

TRUST CHECKING ACCOUNT

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775THE REVERSE SIDE OF THIS DOCUMENT INCLUDES AN ARTIFICIAL WATERMARK • HOLD AT AN ANGLE TO VIEW •
"000281" 1210003581 01208004267

FIC/FSIM 000789

FOOD SERVICE INSURANCE MANAGERS, INC.

3300 DOUGLAS BLVD., SUITE
ROSEVILLE, CA 95661
(916) 773-0206BANK OF AMERICA
Roseville Main Office 20
2221 Douglas Blvd., Roseville, CA 95661

11-35/1210

NO.

0000262
262

PAY

TO THE
ORDER OF

FIVE HUNDRED SEVENTEEN THOUSAND ONE HUNDRED NINETY DOLLARS and 73 CENTS

DATE

01/17/00

AMOUNT

\$517,190.73*

TRUST CHECKING ACCOUNT

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775

⑈000262⑈ ⑆121000358⑆ 01208⑈04267⑈

⑈0051719073⑈

FOOD SERVICE INSURANCE MANAGERS, INC.

3300 DOUGLAS BLVD., SUITE
ROSEVILLE, CA 95661
(916) 773-0206BANK OF AMERICA
Roseville Main Office
2221 Douglas Blvd., Roseville, CA 95661

11-35/1210

NO.

0000270
270

PAY

TO THE
ORDER OF

HUNDRED TWENTY-THREE THOUSAND SEVEN HUNDRED SIX DOLLARS and 39 CENTS

DATE

02/15/00

AMOUNT

\$523,706.39*

TRUST CHECKING ACCOUNT

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775

⑈000270⑈ ⑆121000358⑆ 01208⑈04267⑈

⑈0052370639⑈

FOOD SERVICE INSURANCE MANAGERS, INC.

3300 DOUGLAS BLVD., SUITE
ROSEVILLE, CA 95661
(916) 773-0206BANK OF AMERICA
Roseville Main Office 20
2221 Douglas Blvd., Roseville, CA 95661

11-35/1210

NO.

0000292
292

PAY

TO THE
ORDER OF

HUNDRED TWENTY-THREE THOUSAND EIGHT HUNDRED NINETY-SEVEN DOLLARS and 73 CENTS

DATE

04/12/00

AMOUNT

\$123,897.73*

TRUST CHECKING ACCOUNT

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775

⑈000292⑈ ⑆121000358⑆ 01208⑈04267⑈

⑈0012389773⑈

FOOD SERVICE INSURANCE MANAGERS, INC.

3300 DOUGLAS BLVD., SUITE
ROSEVILLE, CA 95661
(916) 773-0206BANK OF AMERICA
Roseville Main Office 20
2221 Douglas Blvd., Roseville, CA 95661

11-35/1210

NO.

0000293
293

PAY

TO THE
ORDER OF

HUNDRED FIFTY-FOUR THOUSAND TWO HUNDRED NINETY-SEVEN DOLLARS and 65 CENTS

DATE

04/12/00

AMOUNT

\$254,297.65*

TRUST CHECKING ACCOUNT

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775

FIC/FSIM 000790

⑈000293⑈ ⑆121000358⑆ 01208⑈04267⑈

⑈0025429765⑈

2/10/04
FOOD SERVICE INSURANCE MANAGERS, INC.
 3300 DOUGLAS BLVD., SUITE 200
 ROSEVILLE, CA 95661
 (916) 773-0206

BANK OF AMERICA
 Roseville Main Office
 2221 Douglas Blvd., Roseville, CA 95661
 11-35/1210

NO. 0000295
 295

PAY

TO TWO THOUSAND SEVEN HUNDRED FIFTY-NINE DOLLARS and 00 CENTS
 ORDER OF

DATE 04/12/00 AMOUNT \$2,759.00*
 TRUST CHECKING ACCOUNT

FRONTIER INSURANCE CO.
 195 LAKE LOUISE MARIE ROAD
 ROCK HILL, NY 12775

Julie Bugdon

#000295# 121000358 01208 04267# #0000275900#

5/1/04
FOOD SERVICE INSURANCE MANAGERS, INC.
 3300 DOUGLAS BLVD., SUITE 200
 ROSEVILLE, CA 95661
 (916) 773-0206

BANK OF AMERICA
 Roseville Main Office
 2221 Douglas Blvd., Roseville, CA 95661
 11-35/1210

NO. 0000305
 305

PAY

TO TWENTY-ONE THOUSAND SEVEN HUNDRED TWENTY-EIGHT DOLLARS and 99 CENTS
 ORDER OF

DATE 05/15/00 AMOUNT \$21,728.99*
 TRUST CHECKING ACCOUNT

FRONTIER INSURANCE CO.
 195 LAKE LOUISE MARIE ROAD
 ROCK HILL, NY 12775

Julie Bugdon

#000305# 121000358 01208 04267# #0002172899#

FOOD SERVICE INSURANCE MANAGERS, INC.
 3300 DOUGLAS BLVD., SUITE 200
 ROSEVILLE, CA 95661
 (916) 773-0206

BANK OF AMERICA
 Roseville Main Office
 2221 Douglas Blvd., Roseville, CA 95661
 11-35/1210

NO. 0000307
 307

PAY

TO SIXTY-SIX THOUSAND SIX HUNDRED EIGHTY-FOUR DOLLARS and 18 CENTS
 ORDER OF

DATE 05/15/00 AMOUNT \$66,684.18*
 TRUST CHECKING ACCOUNT

FRONTIER INSURANCE CO.
 195 LAKE LOUISE MARIE ROAD
 ROCK HILL, NY 12775

Julie Bugdon

#000307# 121000358 01208 04267# #0006668418#

5/1/04
FOOD SERVICE INSURANCE MANAGERS, INC.
 3300 DOUGLAS BLVD., SUITE 200
 ROSEVILLE, CA 95661
 (916) 773-0206

BANK OF AMERICA
 Roseville Main Office
 2221 Douglas Blvd., Roseville, CA 95661
 11-35/1210

NO. 0000308
 308

PAY

TO TWO HUNDRED FIFTY-FIVE THOUSAND NINE HUNDRED SIXTY-SEVEN DOLLARS and 71 CENTS
 ORDER OF

DATE 05/15/00 AMOUNT \$255,967.71*
 TRUST CHECKING ACCOUNT

FRONTIER INSURANCE CO.
 195 LAKE LOUISE MARIE ROAD
 ROCK HILL, NY 12775

Julie Bugdon

#000308# 121000358 01208 04267# #0025596771#

FIC/FSIM 000791

FOOD SERVICE INSURANCE MANAGERS, INC.
3300 DOUGLAS BLVD., SUITE
ROSEVILLE, CA 95661
(916) 773-0206

BANK OF AMERICA
Roseville Main Office
2221 Douglas Blvd., Roseville, CA 95661
11-35/1210

NO. 0000322

PAY

TO THE ORDER OF ONE HUNDRED EIGHTY-SIX THOUSAND FIVE HUNDRED SIXTY-FIVE DOLLARS and 02 CENTS

DATE

AMOUNT

06/27/00

\$186,565.02*

TRUST CHECKING ACCOUNT

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775

⑈000122⑈ ⑆121000358⑆ 01208⑈04267⑈

⑈0018656502⑈

FOOD SERVICE INSURANCE MANAGERS, INC.
3300 DOUGLAS BLVD., SUITE
ROSEVILLE, CA 95661
(916) 773-0206

BANK OF AMERICA
Roseville Main Office
2221 Douglas Blvd., Roseville, CA 95661
11-35/1210

NO. 0000323

PAY

TO THE ORDER OF FIFTY-THREE THOUSAND NINE HUNDRED SIXTY-EIGHT DOLLARS and 77 CENTS

DATE 06/27/00

AMOUNT \$53,968.77*

TRUST CHECKING ACCOUNT

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775

⑈000123⑈ ⑆121000358⑆ 01208⑈04267⑈

⑈0005396877⑈

FOOD SERVICE INSURANCE MANAGERS, INC.
3300 DOUGLAS BLVD., SUITE
ROSEVILLE, CA 95661
(916) 773-0206

BANK OF AMERICA
Roseville Main Office
2221 Douglas Blvd., Roseville, CA 95661
11-35/1210

NO. 0000329

PAY

TO THE ORDER OF ONE HUNDRED ONE THOUSAND FOUR HUNDRED FORTY-SIX DOLLARS and 74 CENTS

DATE

AMOUNT

07/14/00

\$101,446.74*

TRUST CHECKING ACCOUNT

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775

⑈000129⑈ ⑆121000358⑆ 01208⑈04267⑈

⑈0010144674⑈

FOOD SERVICE INSURANCE MANAGERS, INC.
3300 DOUGLAS BLVD., SUITE
ROSEVILLE, CA 95661
(916) 773-0206

BANK OF AMERICA
Roseville Main Office
2221 Douglas Blvd., Roseville, CA 95661
11-35/1210

NO. 0000331

PAY

TO THE ORDER OF TWO HUNDRED FIFTY THOUSAND ONE HUNDRED FORTY DOLLARS and 34 CENTS

DATE

AMOUNT

07/14/00

\$250,140.34*

TRUST CHECKING ACCOUNT

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775

⑈000131⑈ ⑆121000358⑆ 01208⑈04267⑈

⑈0025014034⑈

FIC/FSIM 000792

FOOD SERVICE INSURANCE MANAGERS, INC.

3300 DOUGLAS BLVD., SUITE 295
ROSEVILLE, CA 95661
(916) 773-0206



BANK OF AMERICA
Roseville Main Office #0120
2221 Douglas Blvd., Roseville, CA 95661

11-35/1210

NO.

0000348
348

PAY

TO ~~EIGHT~~ THOUSAND TWO HUNDRED SEVENTY-NINE DOLLARS and 72 CENTS
ORDER OF

DATE
08/01/00

AMOUNT

\$8,279.72*

TRUST CHECKING ACCOUNT

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775

THE REVERSE SIDE OF THIS DOCUMENT INCLUDES AN ARTIFICIAL WATERMARK • HOLD AT AN ANGLE TO VIEW

⑈000348⑈ ⑆121000358⑆ 01208⑈04267⑈

FOOD SERVICE INSURANCE MANAGERS, INC.
 3300 DOUGLAS BLVD., SUITE 295
 ROSEVILLE, CA 95661
 (916) 773-0206

BANK OF AMERICA
 Roseville Main Office #0120
 2221 Douglas Blvd., Roseville, CA 95661
 11-35/1210

NO. 0000345
 345

PAY

TO ~~ONE~~ THOUSAND TWO HUNDRED EIGHTY-EIGHT DOLLARS and 15 CENTS
 ORDER OF

08/01/00

\$1,288.15*

TRUST CHECKING ACCOUNT

FRONTIER INSURANCE CO.
 195 LAKE LOUISE MARIE ROAD
 ROCK HILL, NY 12775

"000345" : 121000358: 0120804267" "0000128815"

FOOD SERVICE INSURANCE MANAGERS, INC.
 3300 DOUGLAS BLVD., SUITE 295
 ROSEVILLE, CA 95661
 (916) 773-0206

BANK OF AMERICA
 Roseville Main Office #0120
 2221 Douglas Blvd., Roseville, CA 95661
 11-35/1210

NO. 0000346
 346

PAY

TO ~~ONE~~ THOUSAND FIVE HUNDRED SIXTY-THREE DOLLARS and 14 CENTS
 ORDER OF

08/01/00

\$1,563.14*

TRUST CHECKING ACCOUNT

FRONTIER INSURANCE CO.
 195 LAKE LOUISE MARIE ROAD
 ROCK HILL, NY 12775

"000346" : 121000358: 0120804267" "0000156314"

FOOD SERVICE INSURANCE MANAGERS, INC.
 3300 DOUGLAS BLVD., SUITE 295
 ROSEVILLE, CA 95661
 (916) 773-0206

BANK OF AMERICA
 Roseville Main Office #0120
 2221 Douglas Blvd., Roseville, CA 95661
 11-35/1210

NO. 0000347
 347

PAY

TO ~~ONE~~ THOUSAND FIVE HUNDRED SIXTY-FIVE DOLLARS and 49 CENTS
 ORDER OF

08/01/00

\$1,565.49*

TRUST CHECKING ACCOUNT

FRONTIER INSURANCE CO.
 195 LAKE LOUISE MARIE ROAD
 ROCK HILL, NY 12775

"000347" : 121000358: 0120804267" "0000156549"

FOOD SERVICE INSURANCE MANAGERS, INC.
 3300 DOUGLAS BLVD., SUITE 295
 ROSEVILLE, CA 95661
 (916) 773-0206

BANK OF AMERICA
 Roseville Main Office #0120
 2221 Douglas Blvd., Roseville, CA 95661
 11-35/1210

NO. 0000349
 349

PAY

TO ~~TWO~~ THOUSAND TWO HUNDRED ELEVEN DOLLARS and 49 CENTS
 ORDER OF

08/01/00

\$2,211.49*

TRUST CHECKING ACCOUNT

FRONTIER INSURANCE CO.
 195 LAKE LOUISE MARIE ROAD
 ROCK HILL, NY 12775

FIC/FSIM 000794

"000349" : 121000358: 0120804267" "0000221149"

FOOD SERVICE INSURANCE MANAGERS, INC.
3300 DOUGLAS BLVD., SUITE 295
ROSEVILLE, CA 95661
(916) 773-0206

BANK OF AMERICA
Roseville Main Office #0120
2221 Douglas Blvd., Roseville, CA 95661
11-35/1210

NO. 0000350
350

PAY TO TWO THOUSAND EIGHT HUNDRED FIFTY-FOUR DOLLARS and 83 CENTS
ORDER OF DATE 08/01/00 AMOUNT \$2,854.83*
TRUST CHECKING ACCOUNT

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775

⑈000350⑈ ⑆121000358⑆ 01208⑈04267⑈ ⑈0000285483⑈

FOOD SERVICE INSURANCE MANAGERS, INC.
3300 DOUGLAS BLVD., SUITE 295
ROSEVILLE, CA 95661
(916) 773-0206

BANK OF AMERICA
Roseville Main Office #0120
2221 Douglas Blvd., Roseville, CA 95661
11-35/1210

NO. 0000351
351

PAY TO FIVE THOUSAND TWO HUNDRED NINETY-TWO DOLLARS and 32 CENTS
ORDER OF DATE 08/01/00 AMOUNT \$5,292.32*
TRUST CHECKING ACCOUNT

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775

⑈000351⑈ ⑆121000358⑆ 01208⑈04267⑈ ⑈0000529232⑈

FOOD SERVICE INSURANCE MANAGERS, INC.
3300 DOUGLAS BLVD., SUITE 295
ROSEVILLE, CA 95661
(916) 773-0206

BANK OF AMERICA
Roseville Main Office #0120
2221 Douglas Blvd., Roseville, CA 95661
11-35/1210

NO. 0000352
352

PAY TO NINE HUNDRED TWENTY-SEVEN DOLLARS and 26 CENTS
ORDER OF DATE 08/01/00 AMOUNT \$927.26*
TRUST CHECKING ACCOUNT

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775

⑈000352⑈ ⑆121000358⑆ 01208⑈04267⑈ ⑈0000092726⑈

FOOD SERVICE INSURANCE MANAGERS, INC.
3300 DOUGLAS BLVD., SUITE 295
ROSEVILLE, CA 95661
(916) 773-0206

BANK OF AMERICA
Roseville Main Office #0120
2221 Douglas Blvd., Roseville, CA 95661
11-35/1210

NO. 0000353
353

PAY TO NINETEEN THOUSAND TWO HUNDRED FOURTEEN DOLLARS and 85 CENTS
ORDER OF DATE 08/01/00 AMOUNT \$19,214.85*
TRUST CHECKING ACCOUNT

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775

FIC/FSIM 000795

⑈000353⑈ ⑆121000358⑆ 01208⑈04267⑈ ⑈0001921485⑈

FOOD SERVICE INSURANCE MANAGERS, INC.
3300 DOUGLAS BLVD., SUITE 295
ROSEVILLE, CA 95661
(916) 773-0206

BANK OF AMERICA
Roseville Main Office #0120
2221 Douglas Blvd., Roseville, CA 95661
11-35/1210

NO. 0000354
354

PAY

TO ~~TEN~~ THOUSAND NINE HUNDRED THIRTY DOLLARS and 36 CENTS
ORDER OF

DATE 08/01/00 AMOUNT \$10,930.36*
TRUST CHECKING ACCOUNT

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775

"000354" : 121000358: 01208 04267 " "0001093036"

FOOD SERVICE INSURANCE MANAGERS, INC.
3300 DOUGLAS BLVD., SUITE 295
ROSEVILLE, CA 95661
(916) 773-0206

BANK OF AMERICA
Roseville Main Office #0120
2221 Douglas Blvd., Roseville, CA 95661
11-35/1210

NO. 0000355
355

PAY

TO ~~TWENTY~~-FIVE THOUSAND TWENTY DOLLARS and 54 CENTS
ORDER OF

DATE 08/01/00 AMOUNT \$25,020.54*
TRUST CHECKING ACCOUNT

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775

"000355" : 121000358: 01208 04267 " "0002502054"

FOOD SERVICE INSURANCE MANAGERS, INC.
3300 DOUGLAS BLVD., SUITE 295
ROSEVILLE, CA 95661
(916) 773-0206

BANK OF AMERICA
Roseville Main Office #0120
2221 Douglas Blvd., Roseville, CA 95661
11-35/1210

NO. 0000356
356

PAY

TO ~~SIX~~ THOUSAND SEVEN HUNDRED FIFTY-ONE DOLLARS and 83 CENTS
ORDER OF

DATE 08/01/00 AMOUNT \$6,751.83*
TRUST CHECKING ACCOUNT

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775

"000356" : 121000358: 01208 04267 " "0000675183"

FOOD SERVICE INSURANCE MANAGERS, INC.
3300 DOUGLAS BLVD., SUITE 295
ROSEVILLE, CA 95661
(916) 773-0206

BANK OF AMERICA
Roseville Main Office #0120
2221 Douglas Blvd., Roseville, CA 95661
11-35/1210

NO. 0000362
362

PAY

TO ~~TWENTY~~-FOUR THOUSAND NINE HUNDRED SEVEN DOLLARS and 48 CENTS
ORDER OF

DATE 08/23/00 AMOUNT \$24,907.48*
TRUST CHECKING ACCOUNT

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775

FIC/FSIM 000796

"000362" : 121000358: 01208 04267 " "0002490748"



DWIGHT HALVORSON INSURANCE SERVICES
3300 DOUGLAS BOULEVARD, SUITE 295
ROSEVILLE, CALIFORNIA 95661-3807
(916) 773-0206



BANK OF AMERICA
Roseville Main, #0120
2221 Douglas Blvd., Roseville, CA 95661
11-35/1210

0003341

NO. 3341

PAY
TEN THOUSAND DOLLARS and 00 CENTS
TO THE ORDER OF

RISK MANAGEMENT SERVICES
PO BOX 276307
SACRAMENTO, CA 95827-6307

DATE

01/19/98

AMOUNT

\$10,000.00*

TRUST CHECKING ACCOUNT

[Signature]
[Signature]

THE REVERSE SIDE OF THIS DOCUMENT INCLUDES AN ARTIFICIAL WATERMARK. HOLD AT AN ANGLE TO VIEW.
"003341" :121000358: 0120904054 "0001000000"



DWIGHT HALVORSON INSURANCE SERVICES
3300 DOUGLAS BOULEVARD, SUITE 295
ROSEVILLE, CALIFORNIA 95661-3807
(916) 773-0206



BANK OF AMERICA
Roseville Main, #0120
2221 Douglas Blvd., Roseville, CA 95661
11-35/1210

0003508

NO. 3508

PAY
ONE HUNDRED EIGHTY-THREE THOUSAND SEVEN HUNDRED FIFTY-THREE DOLLARS and 98 CENTS
TO THE ORDER OF

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775

DATE

04/05/98

AMOUNT

\$183,753.98*

TRUST CHECKING ACCOUNT

[Signature]
[Signature]

THE REVERSE SIDE OF THIS DOCUMENT INCLUDES AN ARTIFICIAL WATERMARK. HOLD AT AN ANGLE TO VIEW.
"003508" :121000358: 0120904054 "0018375398"



DWIGHT HALVORSON INSURANCE SERVICES
3300 DOUGLAS BOULEVARD, SUITE 295
ROSEVILLE, CALIFORNIA 95661-3807
(916) 773-0206



BANK OF AMERICA
Roseville Main, #0120
2221 Douglas Blvd., Roseville, CA 95661
11-35/1210

0003514

NO. 3514

PAY
SIXTY-NINE THOUSAND FIVE HUNDRED TWENTY-FOUR DOLLARS and 53 CENTS
TO THE ORDER OF

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775

DATE

04/10/98

AMOUNT

\$69,524.53*

TRUST CHECKING ACCOUNT

[Signature]
[Signature]

THE REVERSE SIDE OF THIS DOCUMENT INCLUDES AN ARTIFICIAL WATERMARK. HOLD AT AN ANGLE TO VIEW.
"003514" :121000358: 0120904054 "0006952453"



DWIGHT HALVORSON INSURANCE SERVICES
3300 DOUGLAS BOULEVARD, SUITE 295
ROSEVILLE, CALIFORNIA 95661-3807
(916) 773-0206



BANK OF AMERICA
Roseville Main, #0120
2221 Douglas Blvd., Roseville, CA 95661
11-35/1210

0003584

NO. 3584

PAY
FORTY THOUSAND SEVEN HUNDRED SIXTY-TWO DOLLARS and 78 CENTS
TO THE ORDER OF

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775

DATE

05/16/98

AMOUNT

\$40,762.73*

FIC/FSIM 000797

TRUST CHECKING ACCOUNT

[Signature]
[Signature]



DWIGHT HALVORSON INSURANCE SERVICES
3300 DOUGLAS BOULE. D, SUITE 295
ROSEVILLE, CALIFORNIA 95661-3807
(916) 773-0206



BANK OF AMERICA
Roseville Main C #0120
2221 Douglas Blvd., Roseville, CA 95661

0003626

11-35/1210

NO.

3626

PAY

THIRTY-TWO THOUSAND THREE HUNDRED TWENTY-FOUR DOLLARS and 91 CENTS
ORDER OF

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE
ROCK HILL, NY 12775

*These have
not been
copied yet*

11/1/98

\$82,324.91*

TRUST CHECKING ACCOUNT

Julie A. Bryerton

AT THE REVERSE SIDE OF THIS DOCUMENT INCLUDES AN ARTIFICIAL WATERMARK - HOLD AT AN ANGLE TO VIEW

#003626# 121000358# 01209#04054#

19#04054#

#003626# 121000358# 01209#04054#



DWIGHT HALVORSON INSURANCE SERVICES
3300 DOUGLAS BOULE. D, SUITE 295
ROSEVILLE, CALIFORNIA 95661-3807
(916) 773-0206



BANK OF AMERICA
Roseville Main C #0120
2221 Douglas Blvd., Roseville, CA 95661

0003673

11-35/1210

NO.

PAY

ONE HUNDRED SEVENTY-SIX THOUSAND TWO HUNDRED THIRTY-FOUR DOLLARS and 26 CENTS
ORDER OF

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775

07/15/98

\$176,234.26*

TRUST CHECKING ACCOUNT

Julie A. Bryerton

#003673# 121000358# 01209#04054#

#003673# 121000358# 01209#04054#



DWIGHT HALVORSON INSURANCE SERVICES
3300 DOUGLAS BOULE. D, SUITE 295
ROSEVILLE, CALIFORNIA 95661-3807
(916) 773-0206



BANK OF AMERICA
Roseville Main C #0120
2221 Douglas Blvd., Roseville, CA 95661

0003704

11-35/1210

NO.

3704

PAY

TWO HUNDRED TWENTY-THREE THOUSAND ONE HUNDRED SIXTY-TWO DOLLARS and 48 CENTS
ORDER OF

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775

08/14/98

\$223,162.48*

TRUST CHECKING ACCOUNT

Julie A. Bryerton

#003704# 121000358# 01209#04054#

#003704# 121000358# 01209#04054#



DWIGHT HALVORSON INSURANCE SERVICES
3300 DOUGLAS BOULE. D, SUITE 295
ROSEVILLE, CALIFORNIA 95661-3807
(916) 773-0206



BANK OF AMERICA
Roseville Main C #0120
2221 Douglas Blvd., Roseville, CA 95661

0003759

11-35/1210

NO.

3759

PAY

TWO HUNDRED TWENTY-ONE THOUSAND FOUR HUNDRED THREE DOLLARS and 22 CENTS
ORDER OF

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775

09/15/98

\$221,403.22*

TRUST CHECKING ACCOUNT

Dwight Halvorson

FIC/FSIM 000798



DWIGHT HALVORSON INSURANCE SERVICES
3300 DOUGLAS BOULEVARD, SUITE 295
ROSEVILLE, CALIFORNIA 95661-3807
(916) 773-0206



BANK OF AMERICA
Roseville Main Office #0120
2221 Douglas Blvd., Roseville, CA 95661

0003784

11-35/1210

NO.

3784

PAY

TWO HUNDRED SIXTY-TWO THOUSAND SIX HUNDRED EIGHTY-ONE DOLLARS and 68 CENTS
ORDER OF

DATE

AMOUNT

10/12/98

\$262,681.68*

TRUST CHECKING ACCOUNT

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775

Julie A. Bryerton

THE REVERSE SIDE OF THIS DOCUMENT INCLUDES AN ARTIFICIAL WATERMARK. HOLD AT AN ANGLE TO VIEW.

"003784"

121000358

0120904054

"003784168"



DWIGHT HALVORSON INSURANCE SERVICES
3300 DOUGLAS BOULEVARD, SUITE 295
ROSEVILLE, CALIFORNIA 95661-3807
(916) 773-0206



BANK OF AMERICA
Roseville Main Office #0120
2221 Douglas Blvd., Roseville, CA 95661

0003837

11-35/1210

NO.

3837

PAY

TWO HUNDRED TWENTY-SEVEN THOUSAND NINE HUNDRED NINE DOLLARS and 19 CENTS
ORDER OF

DATE

AMOUNT

11/11/98

\$227,909.19*

TRUST CHECKING ACCOUNT

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775

Julie A. Bryerton

THE REVERSE SIDE OF THIS DOCUMENT INCLUDES AN ARTIFICIAL WATERMARK. HOLD AT AN ANGLE TO VIEW.

"003837"

121000358

0120904054

"0022790919"

27856



DWIGHT HALVORSON INSURANCE SERVICES
3300 DOUGLAS BOULEVARD, SUITE 295
ROSEVILLE, CALIFORNIA 95661-3807
(916) 773-0206



BANK OF AMERICA
Roseville Main Office #0120
2221 Douglas Blvd., Roseville, CA 95661

0003890

11-35/1210

NO.

3890

PAY

FOUR HUNDRED FORTY THOUSAND EIGHT HUNDRED TWENTY-EIGHT DOLLARS and 68 CENTS
ORDER OF

DATE

AMOUNT

12/15/98

\$440,828.68*

TRUST CHECKING ACCOUNT

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775

Dwight J. Halvorson

THE REVERSE SIDE OF THIS DOCUMENT INCLUDES AN ARTIFICIAL WATERMARK. HOLD AT AN ANGLE TO VIEW.

"003890"

121000358

0120904054

"0044082868"

2868



DWIGHT HALVORSON INSURANCE SERVICES
3300 DOUGLAS BOULEVARD, SUITE 295
ROSEVILLE, CALIFORNIA 95661-3807
(916) 773-0206



BANK OF AMERICA
Roseville Main Office #0120
2221 Douglas Blvd., Roseville, CA 95661

0003907

11-35/1210

NO.

3907

PAY

THIRTY HUNDRED THOUSAND FOUR HUNDRED THIRTY-FIVE DOLLARS and 40 CENTS
ORDER OF

DATE

AMOUNT

01/14/99

\$300,435.40*

TRUST CHECKING ACCOUNT

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775

Julie A. Bryerton

FIC/FSIM 000799



DWIGHT HALVORSON INSURANCE SERVICES
3300 DOUGLAS BOULEVARD, SUITE 295
ROSEVILLE, CALIFORNIA 95661-3807
(916) 773-0206



BANK OF AMERICA
Roseville Main Office #20
2221 Douglas Blvd., Roseville, CA 95661

0003956

11-35/1210

NO.

3956

PAY

TO THE ORDER OF TWO HUNDRED SIXTY-FOUR THOUSAND FOUR HUNDRED TEN DOLLARS and 48 CENTS

DATE

AMOUNT

02/18/99

\$264,410.48*

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775

TRUST CHECKING ACCOUNT

Julie A. Bryerton

"003956" 0121000358 01209 04054

"0026441048"

2785



DWIGHT HALVORSON INSURANCE SERVICES
3300 DOUGLAS BOULEVARD, SUITE 295
ROSEVILLE, CALIFORNIA 95661-3807
(916) 773-0206



BANK OF AMERICA
Roseville Main Office #J
2221 Douglas Blvd., Roseville, CA 95661

0003986

11-35/1210

NO.

3986

PAY

TO THE ORDER OF HUNDRED NINETY-TWO THOUSAND SIX HUNDRED ONE DOLLARS and 24 CENTS

DATE

AMOUNT

03/15/99

\$192,601.24*

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775

TRUST CHECKING ACCOUNT

Julie A. Bryerton

"003986" 0121000358 01209 04054

"0019260124"

2785



DWIGHT HALVORSON INSURANCE SERVICES
3300 DOUGLAS BOULEVARD, SUITE 295
ROSEVILLE, CALIFORNIA 95661-3807
(916) 773-0206



BANK OF AMERICA
Roseville Main Office #K
2221 Douglas Blvd., Roseville, CA 95661

0003988

11-35/1210

NO.

3988

PAY

TO THE ORDER OF TWO HUNDRED SIXTY-EIGHT THOUSAND THREE HUNDRED FIFTY-SIX DOLLARS and 41 CENTS

DATE

AMOUNT

03/15/99

\$268,356.41*

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775

TRUST CHECKING ACCOUNT

Julie A. Bryerton

"003988" 0121000358 01209 04054

"0026835641"

2785



DWIGHT HALVORSON INSURANCE SERVICES
3300 DOUGLAS BOULEVARD, SUITE 295
ROSEVILLE, CALIFORNIA 95661-3807
(916) 773-0206



BANK OF AMERICA
Roseville Main Office #J
2221 Douglas Blvd., Roseville, CA 95661

0003989

11-35/1210

NO.

3989

PAY

TO THE ORDER OF FORTY-TWO THOUSAND THREE HUNDRED THIRTY-TWO DOLLARS and 60 CENTS

DATE

AMOUNT

03/15/99

\$32,332.60*

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775

TRUST CHECKING ACCOUNT

Julie A. Bryerton

FIC/FSIM 000800



DWIGHT HALVORSON INSURANCE SERVICES
3300 DOUGLAS BOULEVARD, SUITE 295
ROSEVILLE, CALIFORNIA 95661-3807
(916) 773-0206



BANK OF AMERICA
Roseville Main Office #0120
2221 Douglas Blvd., Roseville, CA 95661

11-35/1210

NO.

0003991

3991

PAY

TO ONE THOUSAND FIVE HUNDRED NINETY-NINE DOLLARS and 52 CENTS
ORDER OF

DATE

AMOUNT

03/15/99

\$1,599.52*

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775

TRUST CHECKING ACCOUNT

Julie A. Bruston

THE REVERSE SIDE OF THIS DOCUMENT INCLUDES AN ARTIFICIAL WATERMARK - HOLD AT AN ANGLE TO VIEW

⑈003991⑈ ⑆121000358⑆ 01209⑈04054⑈



DWIGHT HALVORSON INSURANCE SERVICES
3300 DOUGLAS BOULEVARD, SUITE 295
ROSEVILLE, CALIFORNIA 95661-3807
(916) 773-0206



BANK OF AMERICA
Roseville Main Office 20
2221 Douglas Blvd., Roseville, CA 95661

0003990

11-35/1210

NO.

3990

PAY

TO THREE THOUSAND SIX HUNDRED FORTY-NINE DOLLARS and 70 CENTS
ORDER OF

DATE

AMOUNT

03/15/99

\$3,649.70*

TRUST CHECKING ACCOUNT

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775

Julie A. Bryerton

THE REVERSE SIDE OF THIS DOCUMENT INCLUDES AN ARTIFICIAL WATERMARK WHICH AT AN ANGLE TO VIEW

0003990 121000358 01209 04054 0000364 2785



DWIGHT HALVORSON INSURANCE SERVICES
3300 DOUGLAS BOULEVARD, SUITE 295
ROSEVILLE, CALIFORNIA 95661-3807
(916) 773-0206



BANK OF AMERICA
Roseville Main Office #120
2221 Douglas Blvd., Roseville, CA 95661

0004027

11-35/1210

NO.

4027

PAY

TO TWO HUNDRED SIX THOUSAND FORTY-ONE DOLLARS and 04 CENTS
ORDER OF

DATE

AMOUNT

04/16/99

\$206,041.04*

TRUST CHECKING ACCOUNT

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775

Dwight J. Halvorson

THE REVERSE SIDE OF THIS DOCUMENT INCLUDES AN ARTIFICIAL WATERMARK WHICH AT AN ANGLE TO VIEW

0004027 121000358 01209 04054 00000604 194

Replaced
with
4/29/99 WIRE



DWIGHT HALVORSON INSURANCE SERVICES
3300 DOUGLAS BOULEVARD, SUITE 295
ROSEVILLE, CALIFORNIA 95661-3807
(916) 773-0206



BANK OF AMERICA
Roseville Main Office 20
2221 Douglas Blvd., Roseville, CA 95661

0004028

11-35/1210

NO.

4028

PAY
TO THE
ORDER OF

NINE THOUSAND SEVEN HUNDRED THIRTY-THREE DOLLARS and 84 CENTS

AMOUNT

04/16/99

\$9,733.84*

TRUST CHECKING ACCOUNT

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775

Dwight J. Halvorson

THE REVERSE SIDE OF THIS DOCUMENT INCLUDES AN ARTIFICIAL WATERMARK WHICH AT AN ANGLE TO VIEW

0004028 121000358 01209 04054 00000733 84



DWIGHT HALVORSON INSURANCE SERVICES
3300 DOUGLAS BOULEVARD, SUITE 295
ROSEVILLE, CALIFORNIA 95661-3807
(916) 773-0206



BANK OF AMERICA
Roseville Main Office 20
2221 Douglas Blvd., Roseville, CA 95661

0004029

11-35/1210

NO.

4029

PAY
TO THE
ORDER OF

TWO HUNDRED TEN THOUSAND FOUR HUNDRED FIFTY-TWO DOLLARS and 99 CENTS

\$210,452.99*

04/15/99

TRUST CHECKING ACCOUNT

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775

Dwight J. Halvorson

FIC/FSIM 000802



DWIGHT HALVORSON INSURANCE SERVICES
3300 DOUGLAS BOULEVARD, SUITE 295
ROSEVILLE, CALIFORNIA 95661-3807
(916) 773-0206



BANK OF AMERICA
Roseville Main Office
2221 Douglas Blvd., Roseville, CA 95661
11-35/1210

0004030

NO. 4030

PAY
NINE HUNDRED EIGHT DOLLARS and 10 CENTS
TO THE
ORDER OF

DATE

AMOUNT

04/16/99

\$908.10*

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775

TRUST CHECKING ACCOUNT

[Signature]
Dwight Halvorson

004030 121000358 01209 04054*

000090810



DWIGHT HALVORSON INSURANCE SERVICES
3300 DOUGLAS BOULEVARD, SUITE 295
ROSEVILLE, CALIFORNIA 95661-3807
(916) 773-0206



BANK OF AMERICA
Roseville Main Office
2221 Douglas Blvd., Roseville, CA 95661
11-35/1210

0004053

NO. 4053

PAY
TEN HUNDRED NINETY-FOUR THOUSAND THREE HUNDRED EIGHTY-SIX DOLLARS and 61 CENTS
TO THE
ORDER OF

DATE

AMOUNT

05/14/99

\$194,386.61*

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775

TRUST CHECKING ACCOUNT

[Signature]
Julie A. Bryerton

004053 121000358 01209 04054*

00194386611



DWIGHT HALVORSON INSURANCE SERVICES
3300 DOUGLAS BOULEVARD, SUITE 295
ROSEVILLE, CALIFORNIA 95661-3807
(916) 773-0206



BANK OF AMERICA
Roseville Main Office
2221 Douglas Blvd., Roseville, CA 95661
11-35/1210

0004054

NO. 4054

PAY
THREE HUNDRED TWENTY-SEVEN THOUSAND SEVEN HUNDRED EIGHTY DOLLARS and 66 CENTS
TO THE
ORDER OF

DATE

AMOUNT

05/14/99

\$327,780.66*

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775

TRUST CHECKING ACCOUNT

[Signature]
Julie A. Bryerton

004054 121000358 01209 04054*

00327780661



DWIGHT HALVORSON INSURANCE SERVICES
3300 DOUGLAS BOULEVARD, SUITE 295
ROSEVILLE, CALIFORNIA 95661-3807
(916) 773-0206



BANK OF AMERICA
Roseville Main Office
2221 Douglas Blvd., Roseville, CA 95661
11-35/1210

0004055

NO. 4055

PAY
TWO THOUSAND FIVE HUNDRED SEVEN DOLLARS and 58 CENTS
TO THE
ORDER OF

DATE

AMOUNT

05/14/99

\$2,507.58*

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775

TRUST CHECKING ACCOUNT

[Signature]
Julie A. Bryerton

FIC/FSIM 000803



DWIGHT HALVORSON INSURANCE SERVICES
3300 DOUGLAS BOULEVARD, SUITE 295
ROSEVILLE, CALIFORNIA 95661-3807
(916) 773-0206



BANK OF AMERICA
Roseville Main Office 20
2221 Douglas Blvd., Roseville, CA 95661

0004067

11-35/1210

NO.

4067

PAY

DATE

AMOUNT

TO THE ORDER OF ~~THREE~~ HUNDRED NINETY-EIGHT THOUSAND THREE HUNDRED THIRTEEN DOLLARS and 36 CENTS

06/09/99

\$198,313.36*

TRUST CHECKING ACCOUNT

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775

THE REVERSE SIDE OF THIS DOCUMENT INCLUDES AN ARTIFICIAL WATERMARK, HOLD AT AN ANGLE TO VIEW

004067 121000358 01209 04054 0049831336 27835



DWIGHT HALVORSON INSURANCE SERVICES
3300 DOUGLAS BOULEVARD, SUITE 295
ROSEVILLE, CALIFORNIA 95661-3807
(916) 773-0206



BANK OF AMERICA
Roseville Main Office 20
2221 Douglas Blvd., Roseville, CA 95661

0004068

11-35/1210

NO.

4068

PAY

DATE

AMOUNT

TO THE ORDER OF ~~THREE~~ HUNDRED EIGHT THOUSAND SIX HUNDRED FORTY-TWO DOLLARS and 23 CENTS

06/09/99

\$308,642.23*

TRUST CHECKING ACCOUNT

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775

THE REVERSE SIDE OF THIS DOCUMENT INCLUDES AN ARTIFICIAL WATERMARK, HOLD AT AN ANGLE TO VIEW

004068 121000358 01209 04054 0030864223 27850



DWIGHT HALVORSON INSURANCE SERVICES
3300 DOUGLAS BOULEVARD, SUITE 295
ROSEVILLE, CALIFORNIA 95661-3807
(916) 773-0206



BANK OF AMERICA
Roseville Main Office 20
2221 Douglas Blvd., Roseville, CA 95661

0004146

11-35/1210

NO.

4146

PAY

DATE

AMOUNT

TO THE ORDER OF ~~THREE~~ THOUSAND THREE HUNDRED FORTY-SIX DOLLARS and 95 CENTS

09/14/99

\$6,346.95*

TRUST CHECKING ACCOUNT

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775

THE REVERSE SIDE OF THIS DOCUMENT INCLUDES AN ARTIFICIAL WATERMARK, HOLD AT AN ANGLE TO VIEW

004146 121000358 01209 04054 0000634695 3455



DWIGHT HALVORSON INSURANCE SERVICES
3300 DOUGLAS BOULEVARD, SUITE 295
ROSEVILLE, CALIFORNIA 95661-3807
(916) 773-0206



BANK OF AMERICA
Roseville Main Office 20
2221 Douglas Blvd., Roseville, CA 95661

0004220

11-35/1210

NO.

4220

PAY

DATE

AMOUNT

TO THE ORDER OF ~~SEVEN~~ HUNDRED TWENTY-EIGHT THOUSAND NINETY-FIVE DOLLARS and 96 CENTS

11/15/99

\$728,095.96*

TRUST CHECKING ACCOUNT

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775

FIC/FSIM 000804

2785 G

VOID AFTER 90 DAYS

11-35/1210 2017265614

Bank of America

Issuer: BankAmerica Corporation or
Bank of America NT&SA, San Francisco, California

IF THE AMOUNT OF THIS CHECK EXCEEDS \$10,000 IT IS DRAWN ON AND
ISSUED BY BANK OF AMERICA NT&SA AND IT IS A CASHIER'S CHECK

MATCH THE AMOUNT IN WORDS WITH THE AMOUNT IN NUMBERS

BANK OF AMERICA

***** OCT 20 1999 ***** FIVE HUNDRED FIFTY EIGHT THOUSAND FIFTY FOUR DOLLARS AND 30 CENTS

Pay To The
Order Of ***FRONTIER INSURANCE COMPANY***

PURCHASED
DIRECT PAYOR

Official Check

Payable at Bank of America NT&SA,
ISSUED IN U.S. DOLLARS

AUTHORIZED SIGNATURE



TWO SIGNATURES REQUIRED FOR AMOUNTS OVER \$500,000.

⑈ 2017265614 ⑆ ⑆ 121000358 ⑆ 13977 ⑈ 84016 ⑈

2785

Date of Check: 10/20/99

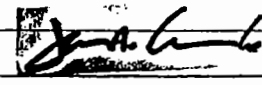
270546

	DWIGHT HALVORSON INSURANCE SERVICES 3300 DOUGLAS BOULEVARD, SUITE 295 ROSEVILLE, CALIFORNIA 95661-3807 (916) 773-0206	 BANK OF AMERICA Roseville Main Office #0120 2221 Douglas Blvd., Roseville, CA 95661 11-35/1210	0004239 NO. 4239
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PAY TO THE ORDER OF **ONE HUNDRED SIXTY-FIVE THOUSAND FORTY-FIVE DOLLARS and 56 CENTS** DATE **12/14/99** AMOUNT **\$165,045.56***

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775



TRUST CHECKING ACCOUNT



THE REVERSE SIDE OF THIS DOCUMENT INCLUDES AN ARTIFICIAL WATERMARK - HOLD AT AN ANGLE TO VIEW

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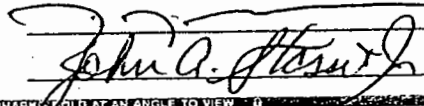
ORIGINAL DOCUMENT IS PRINTED ON CHEMICAL REACTIVE PAPER & HAS A MICROPRINTED BORDER

	DWIGHT HALVORSON INSURANCE SERVICES 3300 DOUGLAS BOULEVARD, SUITE 295 ROSEVILLE, CALIFORNIA 95661-3807 (916) 773-0206	 BANK OF AMERICA Roseville Main Office #0120 2221 Douglas Blvd., Roseville, CA 95661 11-35/1210	0004275 NO. 4275
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PAY TO THE ORDER OF **THREE HUNDRED NINETY-NINE THOUSAND THREE HUNDRED TWELVE DOLLARS and 89 CENTS** DATE **01/17/00** AMOUNT **\$399,312.09***

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775



TRUST CHECKING ACCOUNT



THE REVERSE SIDE OF THIS DOCUMENT INCLUDES AN ARTIFICIAL WATERMARK - HOLD AT AN ANGLE TO VIEW

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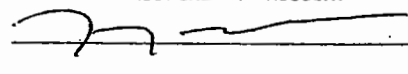
ORIGINAL DOCUMENT IS PRINTED ON CHEMICAL REACTIVE PAPER & HAS A MICROPRINTED BORDER

	DWIGHT HALVORSON INSURANCE SERVICES 3300 DOUGLAS BOULEVARD, SUITE 295 ROSEVILLE, CALIFORNIA 95661-3807 (916) 773-0206	 BANK OF AMERICA Roseville Main Office #0120 2221 Douglas Blvd., Roseville, CA 95661 11-35/1210	0004286 NO. 4286
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PAY TO THE ORDER OF **THREE HUNDRED SIXTY THOUSAND SEVEN HUNDRED FORTY-NINE DOLLARS and 23 CENTS** DATE **02/15/00** AMOUNT **\$360,749.23***

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775



TRUST CHECKING ACCOUNT



THE REVERSE SIDE OF THIS DOCUMENT INCLUDES AN ARTIFICIAL WATERMARK - HOLD AT AN ANGLE TO VIEW

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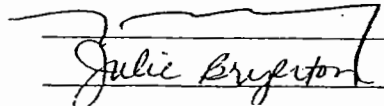
270546

	DWIGHT HALVORSON INSURANCE SERVICES 3300 DOUGLAS BOULEVARD, SUITE 295 ROSEVILLE, CALIFORNIA 95661-3807 (916) 773-0206	 BANK OF AMERICA Roseville Main Office #0120 2221 Douglas Blvd., Roseville, CA 95661 11-35/1210	0004326 NO. 4326
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PAY TO THE ORDER OF **THREE HUNDRED SIXTY-FIVE THOUSAND TWO HUNDRED THIRTY-EIGHT DOLLARS and 72 CENTS** DATE **04/12/00** AMOUNT **\$265,238.72***

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775

TRUST CHECKING ACCOUNT



FIC/FSIM 000807



DWIGHT HALVORSON INSURANCE SERVICES
3300 DOUGLAS BOULEVARD, SUITE 295
ROSEVILLE, CALIFORNIA 95661-3807
(916) 773-0206



BANK OF AMERICA
Roseville Main Office #0120
2221 Douglas Blvd., Roseville, CA 95661

11-35/1210

0004298

NO.

4298

PAY

TO THE ORDER OF TWO HUNDRED SEVENTY THOUSAND SEVENTY-SEVEN DOLLARS and 36 CENTS DATE AMOUNT

03/13/00

9270,077.36*

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775

TRUST CHECKING ACCOUNT

Julie Bryerton

THE REVERSE SIDE OF THIS DOCUMENT INCLUDES AN ARTIFICIAL WATERMARK. HOLD AT AN ANGLE TO VIEW.

004298 121000358 01209 04054



DWIGHT HALVORSON INSURANCE SERVICES
3300 DOUGLAS BOULEVARD, SUITE 295
ROSEVILLE, CALIFORNIA 95661-3807
(916) 773-0206



BANK OF AMERICA
Roseville Main Office #0120
2221 Douglas Blvd., Roseville, CA 95661

11-35/1210

0004299

NO.

4299

PAY

TO THE ORDER OF FIFTY THOUSAND THREE HUNDRED THIRTY-ONE DOLLARS and 73 CENTS DATE AMOUNT

03/13/00

950,331.73*

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775

TRUST CHECKING ACCOUNT

Julie Bryerton

THE REVERSE SIDE OF THIS DOCUMENT INCLUDES AN ARTIFICIAL WATERMARK. HOLD AT AN ANGLE TO VIEW.

004299 121000358 01209 04054



DWIGHT HALVORSON INSURANCE SERVICES
3300 DOUGLAS BOULEVARD SUITE 295
ROSEVILLE, CALIFORNIA 95661-3807
(916) 773-0206



BANK OF AMERICA
Roseville Main Office .20
2221 Douglas Blvd., Roseville, CA 95661
11-35/1210

0004327

NO.

4327

PAY

TO THE ORDER OF
FORTY-TWO THOUSAND ONE HUNDRED FIFTY-THREE DOLLARS and 27 CENTS

DATE

AMOUNT

04/12/00

842,153.27*

TRUST CHECKING ACCOUNT

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775

Julie Bryerton

THE REVERSE SIDE OF THIS DOCUMENT INCLUDES AN ARTIFICIAL WATERMARK. HOLD AT AN ANGLE TO VIEW.

004327 121000358 0120904054 0004215327



DWIGHT HALVORSON INSURANCE SERVICES
3300 DOUGLAS BOULEVARD SUITE 295
ROSEVILLE, CALIFORNIA 95661-3807
(916) 773-0206



BANK OF AMERICA
Roseville Main Office .20
2221 Douglas Blvd., Roseville, CA 95661
11-35/1210

0004357

NO.

4357

PAY

TO THE ORDER OF
FIFTY THOUSAND SIX HUNDRED NINETY-FOUR DOLLARS and 26 CENTS

DATE

AMOUNT

05/15/00

870,694.26*

TRUST CHECKING ACCOUNT

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775

Julie Bryerton

THE REVERSE SIDE OF THIS DOCUMENT INCLUDES AN ARTIFICIAL WATERMARK. HOLD AT AN ANGLE TO VIEW.

004357 121000358 0120904054 0007069426



DWIGHT HALVORSON INSURANCE SERVICES
3300 DOUGLAS BOULEVARD SUITE 295
ROSEVILLE, CALIFORNIA 95661-3807
(916) 773-0206



BANK OF AMERICA
Roseville Main Office .20
2221 Douglas Blvd., Roseville, CA 95661
11-35/1210

0004358

NO.

4358

PAY

TO THE ORDER OF
SEVENTEEN THOUSAND TWELVE DOLLARS and 77 CENTS

DATE

AMOUNT

05/15/00

913,012.77*

TRUST CHECKING ACCOUNT

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775

Julie Bryerton

THE REVERSE SIDE OF THIS DOCUMENT INCLUDES AN ARTIFICIAL WATERMARK. HOLD AT AN ANGLE TO VIEW.

004358 121000358 0120904054 0001301277



DWIGHT HALVORSON INSURANCE SERVICES
3300 DOUGLAS BOULEVARD SUITE 295
ROSEVILLE, CALIFORNIA 95661-3807
(916) 773-0206



BANK OF AMERICA
Roseville Main Office .20
2221 Douglas Blvd., Roseville, CA 95661
11-35/1210

0004361

NO.

4361

PAY

TO THE ORDER OF
HUNDRED THIRTY-THREE THOUSAND FOUR HUNDRED SEVENTY-EIGHT DOLLARS and 01 CENTS

DATE

AMOUNT

05/15/00

9233,478.01*

TRUST CHECKING ACCOUNT

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775

Julie Bryerton

FIC/FSIM 000809

THE REVERSE SIDE OF THIS DOCUMENT INCLUDES AN ARTIFICIAL WATERMARK. HOLD AT AN ANGLE TO VIEW.



DWIGHT HALVORSON INSURANCE SERVICES
3300 DOUGLAS BOULEVARD SUITE 295
ROSEVILLE, CALIFORNIA 95661-3807
(916) 773-0206



BANK OF AMERICA
Roseville Main Office
2221 Douglas Blvd., Roseville, CA 95661

0004402

11-35/1210

NO.

4402

PAY

TO THE ORDER OF

TWENTY-THREE THOUSAND TWO HUNDRED FOURTEEN DOLLARS and 74 CENTS

DATE

AMOUNT

06/27/00

\$73,214.74*

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775

TRUST CHECKING ACCOUNT

John A. Halvorson
Julie Bryerton

0004402 121000358 01209 04054

0007321474



DWIGHT HALVORSON INSURANCE SERVICES
3300 DOUGLAS BOULEVARD SUITE 295
ROSEVILLE, CALIFORNIA 95661-3807
(916) 773-0206



BANK OF AMERICA
Roseville Main Office
2221 Douglas Blvd., Roseville, CA 95661

0004403

11-35/1210

NO.

4403

PAY

TO THE ORDER OF

NINETY-TWO THOUSAND NINE HUNDRED SIXTY-FOUR DOLLARS and 87 CENTS

DATE

AMOUNT

06/27/00

\$92,964.87*

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775

TRUST CHECKING ACCOUNT

John A. Halvorson
Julie Bryerton

0004403 121000358 01209 04054

0009296487



DWIGHT HALVORSON INSURANCE SERVICES
3300 DOUGLAS BOULEVARD SUITE 295
ROSEVILLE, CALIFORNIA 95661-3807
(916) 773-0206



BANK OF AMERICA
Roseville Main Office
2221 Douglas Blvd., Roseville, CA 95661

0004423

11-35/1210

NO.

4423

PAY

TO THE ORDER OF

THIRTY-EIGHT THOUSAND NINE HUNDRED THIRTY-TWO DOLLARS and 57 CENTS

DATE

AMOUNT

07/14/00

\$938,932.57*

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775

TRUST CHECKING ACCOUNT

John A. Halvorson
Julie Bryerton

0004423 121000358 01209 04054

0003893257



DWIGHT HALVORSON INSURANCE SERVICES
3300 DOUGLAS BOULEVARD SUITE 295
ROSEVILLE, CALIFORNIA 95661-3807
(916) 773-0206



BANK OF AMERICA
Roseville Main Office
2221 Douglas Blvd., Roseville, CA 95661

0004424

11-35/1210

NO.

4424

PAY

TO THE ORDER OF

THIRTY-TWO THOUSAND SEVEN HUNDRED TWENTY-ONE DOLLARS and 47 CENTS

DATE

AMOUNT

07/14/00

\$932,721.47*

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775

TRUST CHECKING ACCOUNT

John A. Halvorson
Julie Bryerton

FIC/FSIM 000810



DWIGHT HALVORSON INSURANCE SERVICES
3300 DOUGLAS BOULEVARD, SUITE 295
ROSEVILLE, CALIFORNIA 95661-3807
(916) 773-0208



BANK OF AMERICA
Roseville Main Office, 20
2221 Douglas Blvd., Roseville, CA 95661

0004460

11-35/1210

NO.

4460

PAY

DATE

AMOUNT

TO THE ORDER OF TWELVE THOUSAND FIVE HUNDRED SIXTEEN DOLLARS and 16 CENTS

08/01/00

\$12,516.16*

TRUST CHECKING ACCOUNT

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775

Julie Byggeston

THE REVERSE SIDE OF THIS DOCUMENT INCLUDES AN ARTIFICIAL WATERMARK. HOLD AT AN ANGLE TO VIEW.

0004460 121000358 0120904054 0001251616

ORIGINAL DOCUMENT IS PRINTED ON CHEMICAL REACTIVE PAPER & HAS A MICROPRINTED BORDER.



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(916) 773-0208



BANK OF AMERICA
Roseville Main Office, 20
2221 Douglas Blvd., Roseville, CA 95661

0004461

11-35/1210

NO.

4461

PAY

DATE

AMOUNT

TO THE ORDER OF FIFTEEN THOUSAND SIX HUNDRED THIRTY-NINE DOLLARS and 62 CENTS

08/01/00

\$17,639.62*

TRUST CHECKING ACCOUNT

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775

Julie Byggeston

THE REVERSE SIDE OF THIS DOCUMENT INCLUDES AN ARTIFICIAL WATERMARK. HOLD AT AN ANGLE TO VIEW.

0004461 121000358 0120904054 0001763962

ORIGINAL DOCUMENT IS PRINTED ON CHEMICAL REACTIVE PAPER & HAS A MICROPRINTED BORDER.



DWIGHT HALVORSON INSURANCE SERVICES
3300 DOUGLAS BOULEVARD, SUITE 295
ROSEVILLE, CALIFORNIA 95661-3807
(916) 773-0208



BANK OF AMERICA
Roseville Main Office, 20
2221 Douglas Blvd., Roseville, CA 95661

0004462

11-35/1210

NO.

4462

PAY

DATE

AMOUNT

TO THE ORDER OF TWENTY-THREE THOUSAND FIVE HUNDRED NINETY-THREE DOLLARS and 76 CENTS

08/01/00

\$23,593.76*

TRUST CHECKING ACCOUNT

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775

Julie Byggeston

THE REVERSE SIDE OF THIS DOCUMENT INCLUDES AN ARTIFICIAL WATERMARK. HOLD AT AN ANGLE TO VIEW.

0004462 121000358 0120904054 0002359376

ORIGINAL DOCUMENT IS PRINTED ON CHEMICAL REACTIVE PAPER & HAS A MICROPRINTED BORDER.



DWIGHT HALVORSON INSURANCE SERVICES
3300 DOUGLAS BOULEVARD, SUITE 295
ROSEVILLE, CALIFORNIA 95661-3807
(916) 773-0208



BANK OF AMERICA
Roseville Main Office, 20
2221 Douglas Blvd., Roseville, CA 95661

0004466

11-35/1210

NO.

4466

PAY

DATE

AMOUNT

TO THE ORDER OF ONE HUNDRED ONE DOLLARS and 82 CENTS

08/01/00

\$501.82*

TRUST CHECKING ACCOUNT

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775

Julie Byggeston

FIC/FSIM 000811

ORIGINAL DOCUMENT IS PRINTED ON CHEMICAL REACTIVE PAPER & HAS A MICROPRINTED BORDER.



(916) 773-0206

11-35/1210

NO.

4467

PAY

DATE

AMOUNT

TO THE ORDER OF THOUSAND SIXTY-FIVE DOLLARS and 96 CENTS

08/01/00

\$2,065.96*
TRUST CHECKING ACCOUNTFRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775

⑈004467⑈ ⑆121000358⑆ 01209⑈04054⑈

⑈0000206596⑈

DWIGHT HALVORSON INSURANCE SERVICES
3300 DOUGLAS BOULEVARD, SUITE 295
ROSEVILLE, CALIFORNIA 95661-3807
(916) 773-0206BANK OF AMERICA
Roseville Main Office 20
2221 Douglas Blvd., Roseville, CA 95661

0004468

11-35/1210

NO.

4468

PAY

DATE

AMOUNT

TO THE ORDER OF THOUSAND TWO HUNDRED NINETY-SIX DOLLARS and 09 CENTS

08/01/00

\$4,296.09*
TRUST CHECKING ACCOUNTFRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775

⑈004468⑈ ⑆121000358⑆ 01209⑈04054⑈

⑈0000429609⑈

DWIGHT HALVORSON INSURANCE SERVICES
3300 DOUGLAS BOULEVARD, SUITE 295
ROSEVILLE, CALIFORNIA 95661-3807
(916) 773-0206BANK OF AMERICA
Roseville Main Office 20
2221 Douglas Blvd., Roseville, CA 95661

0004469

11-35/1210

NO.

4469

PAY

DATE

AMOUNT

TO THE ORDER OF FIFTY-THREE THOUSAND FIFTY-SEVEN DOLLARS and 28 CENTS

08/01/00

\$33,057.28*
TRUST CHECKING ACCOUNTFRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775

⑈004469⑈ ⑆121000358⑆ 01209⑈04054⑈

⑈0003305728⑈

DWIGHT HALVORSON INSURANCE SERVICES
3300 DOUGLAS BOULEVARD, SUITE 295
ROSEVILLE, CALIFORNIA 95661-3807
(916) 773-0206BANK OF AMERICA
Roseville Main Office 20
2221 Douglas Blvd., Roseville, CA 95661

0004470

11-35/1210

NO.

4470

PAY

DATE

AMOUNT

TO THE ORDER OF THOUSAND EIGHT HUNDRED FORTY-THREE DOLLARS and 95 CENTS

08/01/00

\$1,843.95*
TRUST CHECKING ACCOUNTFRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775

⑈004470⑈ ⑆121000358⑆ 01209⑈04054⑈

⑈0000184395⑈

27

DWIGHT HALVORSON INSURANCE SERVICES
3300 DOUGLAS BOULEVARD, SUITE 295
ROSEVILLE, CALIFORNIA 95661-3807
(916) 773-0208

BANK OF AMERICA
Roseville Main Office #0120
2221 Douglas Blvd., Roseville, CA 95661
11-35/1210

0004476

FRESHWEST W203 000267

4476

PAY TO THE ORDER OF **SEVENTEEN THOUSAND THREE HUNDRED THIRTY-FOUR DOLLARS and 22 CENTS** DATE **08/24/00** AMOUNT **\$16,334.22***

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775

TRUST CHECKING ACCOUNT

THE REVERSE SIDE OF THIS DOCUMENT INCLUDES AN ARTIFICIAL WATERMARK - HOLD AT AN ANGLE TO VIEW

0004476 121000358 01209 04054 0001633422

DWIGHT HALVORSON INSURANCE SERVICES
3300 DOUGLAS BOULEVARD, SUITE 295
ROSEVILLE, CALIFORNIA 95661-3807
(916) 773-0208

BANK OF AMERICA
Roseville Main Office #0120
2221 Douglas Blvd., Roseville, CA 95661
11-35/1210

0004628

PAY TO THE ORDER OF **SEVENTY-FIVE THOUSAND DOLLARS and 00 CENTS** DATE **02/08/01** AMOUNT **\$75,000.00***

FRONTIER INSURANCE CO.
195 LAKE LOUISE MARIE ROAD
ROCK HILL, NY 12775

TRUST CHECKING ACCOUNT

THE REVERSE SIDE OF THIS DOCUMENT INCLUDES AN ARTIFICIAL WATERMARK - HOLD AT AN ANGLE TO VIEW

0004628 121000358 01209 04054 0007500000

John A. Halverson
Julie Bryerton

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P.07/35



DD SERVICE INSURANCE MANAGERS, INC
 UST ACCOUNT

Statement Period: July 1 through July 30, 1999
 Account Number: 01208-04267

Account Activity

Date	Description	Reference Number	Amount
	Withdrawals, Transfers and Account Fees		
7/12	Check Deposit Adjustment		010,138.16
7/20	Busconstrf Dwight Halvarson Co ID: 1202150000 01208-04267/121000358 ID# 25 Ref:121108251209407		60,000.00
7/23	Money Transfer-Calif Trn: 990723-032420 Sender Ref: 30759 Src: Br 0426 Banf: Frontier Insurance Co Orig: Food Service Insurance Managers Inc	7/23 WIRE	710,291.88
	Total Withdrawals, Transfers and Account Fees		\$780,430.04
	Service Charge		
7/30	7 Teller Deposit(s) Exceeded The Activity Allowance Of 10		014.00

Daily Balance

Date	Amount	Date	Amount	Date	Amount
07/02	\$ 354,990.90	07/20	682,392.04	07/27	58,175.75
07/06	516,793.72	07/21	742,392.04	07/29	141,427.90
07/07	520,850.74	07/22	717,274.71	07/30	137,643.50
07/12	633,285.19	07/23	14,001.83		
07/16	545,130.16	07/26	43,156.66		

FDIC - FDIC Insured Account Disclosure Information

Following information, effective August 9, 1999, replaces the second paragraph of the Overdraft Line Service section under the Overdraft Protection section in our publication, FACTS About Business Deposit Account Programs: If your checking account balance falls below zero, we automatically transfer funds from your business line of credit to your checking account in multiples of \$100. We do so as long as you aren't in default on your business line of credit agreement. The transfer normally may not exceed the amount of available credit on your business line of credit. We make the transfer under the terms and conditions of your business line of credit agreement.

Bank of America

WRIGHT HALVORSON INSURANCE SERVICES
TRUST ACCOUNTStatement Period: July 1 through July 30, 1999
Account Number: 01209-04054☐ Checks Paid Continued * Gap in check sequence

Date Paid	Number	Amount	Date Paid	Number	Amount
07/30	4075	457.00	07/21	4093	4,730.25
07/16	4076	1,103.00	07/21	4094	89,866.62
07/16	4077	1,045.00	07/30	4095	52,274.79
07/30	4078	1,473.00	07/30	4096	9,833.20
07/16	4079	1,437.00	07/23	4097	1,043.00
07/19	4082	518.50	07/28	4098	18,881.00
07/16	4086	1,107.00	07/28	4099	795.00
07/16	4087	582.00	07/29	4105	2,299.22
07/23	4088	1,176.44	07/29	4106	24,145.90
07/29	4090	37,960.15	07/30	4108	149,083.95
07/22	4091	24,076.15	Total of 26 Checks Paid		\$734,892.67
07/27	4092	2,275.50			

☐ Account Activity

Date Posted	Description	Reference Number	Amount
07/20	Other Deposits and Credits Buscontrsf Dwight Halvorson Co ID: 1282150000 01209-04054/121000358 ID# Ref:121108251209408		✓ \$60,000.00
07/19	Withdrawals, Transfers and Account Fees		
07/19	Deposited Item Returned Fee		\$4.00
07/19	Deposited Item Returned		9,142.90
07/19	Money Transfer-Calif Trn: 990719-033347 Sender Ref: 675946 Src: Br 0426 Bent New Frontier Insurance Co Orig: Dwight Halvorson Insurance Svcs Inc	7/19 WIRE	✓ 814,943.38
07/26	Deposited Item Returned Fee		4.00
07/26	Deposited Item Returned		4,352.00
07/28	Deposited Item Returned Fee		4.00
07/28	Deposited Item Returned		1,043.68
07/28	Buscontrsf Dwight Halvorson Co ID: 1282150000 01209-04054/121000358 ID# 29 Ref:121108251059639		✓ 36,899.78
07/28	Buscontrsf Dwight Halvorson Co ID: 1282150000 01209-04054/121000358 ID# 27 Ref:121108251359637		✓ 75,000.00
	Total Withdrawals, Transfers and Account Fees		\$941,393.74
07/30	Service Charge 9 Teller Deposit(s) Exceeded The Activity Allowance Of 10		\$18.00

☐ Daily Balance

Date	Amount	Date	Amount	Date	Amount
07/02	\$ 444,596.74	07/19	377,172.69	07/27	346,902.12
07/06	593,593.73	07/20	458,318.45	07/28	284,189.61
07/07	629,248.03	07/21	303,721.58	07/29	300,275.92
07/12	717,416.73	07/22	291,895.03	07/30	144,178.80
07/14	644,889.73	07/23	310,141.20		
07/16	1,201,781.47	07/26	325,060.38		

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California

Page 2 of 3

Bank of America

WIGHT HALVORSON INSURANCE SERVICES
TRUST ACCOUNTStatement Period: September 1 through September 30, 1999
Account Number: 01209-04054☐ Deposits Continued

Number	Date Posted	Amount	Number	Date Posted	Amount
Total of 20 deposits		\$1,297,056.78			

☐ Checks Paid * Gap in check sequence

Date Paid	Number	Amount	Date Paid	Number	Amount
09/30		\$ 25,000.00	09/21	4146	6,346.95
09/07	* 4126	12,236.53	09/27	4147	38,388.85
09/02	* 4129	719.75	09/17	* 4149	2,405.00
09/07	* 4132	1,644.56	09/17	4150	922.00
09/01	4133	11,981.45	09/17	* 4153	35,750.72
09/02	4134	1,575.00	09/16	4154	2,270.50
09/22	* 4136	1,186.60	09/20	4155	325.00
09/13	4137	5,625.00	09/22	4156	2,950.00
09/22	* 4139	1,352.07	09/29	4157	1,683.00
09/15	* 4141	2,954.23	09/24	4158	18,853.20
09/15	4142	3,363.85	09/24	4159	142,238.57
09/15	4143	427.44	Total of 24 Checks Paid		\$320,920.11
09/15	* 4145	719.84			

☐ Account Activity

Date Posted	Description	Reference Number	Amount
	Withdrawals, Transfers and Account Fees		
09/02	Deposited Item Returned Fee		\$4.00
09/02	Deposited Item Returned		5,000.00
09/02	Buscontrsf Dwight Halvorson Co ID: 1282150000 01209-04054/121000358 ID# 27 Ref:121108255863130		20,000.00
09/10	Buscontrsf Dwight Halvorson Co ID: 1282150000 01209-04054/121000358 ID# 27 Ref:121108254000473		50,000.00
09/16	Buscontrsf Dwight Halvorson Co ID: 1282150000 01209-04054/121000358 ID# 27 Ref:121108258162228		20,000.00
09/17	Money Transfer-Calif Trn: 990917-033825 Sender Ref: 945765 Src: Br 0426 Benf. Frontier Insurance Co Orig: Dwight Halvorson Insurance Services	9/17 WIRE	832,188.41
09/20	Deposited Item Returned Fee		4.00
09/20	Deposited Item Returned		3,937.37
09/21	Buscontrsf Dwight Halvorson Co ID: 1282150000 01209-04054/121000358 ID# 29 Ref:121108256677037		30,000.00
09/27	Buscontrsf Dwight Halvorson Co ID: 1282150000 01209-04054/121000358 ID# 27 Ref:121108254069058		4,000.00
09/27	Buscontrsf Dwight Halvorson Co ID: 1282150000 01209-04054/121000358 ID# 29 Ref:121108254069062		20,000.00
09/27	Buscontrsf Dwight Halvorson Co ID: 1282150000 01209-04054/121000358 ID# 27 Ref:121108254069060		44,000.00
	Total Withdrawals, Transfers and Account Fees		\$1,029,133.78
	Service Charge		
09/30	10 Teller Deposit(s) Exceeded The Activity Allowance Of 10		\$20.00

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P.11/35



0 SERVICE INSURANCE MANAGERS, INC
ST ACCOUNT

Statement Period: September 1 through September 30, 1999
Account Number: 01208-04267

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cks Paid Continued * Gap in check sequence

Date Paid	Number	Amount	Date Paid	Number	Amount
09/27	* 216	637.50	09/28	218	34,007.95
09/20	217	2,674.60	Total of 6 Checks Paid		6103,261.45

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ount Activity

to sted	Description	Reference Number	Amount
	Withdrawals, Transfers and Account Fees		
/02	Buscontraf Dwight Halvorson Co ID: 1282150000 01208-04267/121000358 ID# 24 Ref:121108255863132		\$40,000.00
/10	Buscontraf Dwight Halvorson Co ID: 1282150000 01208-04267/121000358 ID# 24 Ref:121108254000475		2,727.52
/10	Buscontraf Dwight Halvorson Co ID: 1282150000 01208-04267/121000358 ID# 24 Ref:121108254000477		50,000.00
/17	Money Transfer-Calif Trn: 990917-034054 Sender Ref: 945773 Src: Br 0426 Benf: Frontier Insurance Co Orig: Food Services Insurance Managers Inc	9/17 WIRE	648,022.51
/24	Money Transfer-Calif Trn: 990924-025731 Sender Ref: 00990924000953nn Src: Bank Funds Trn Benf: Frontier Insurance Co Orig: /0120804267		7,576.00
/24	Money Transfer-Calif Trn: 990924-031208 Sender Ref: 00990924001031nn Src: Bank Funds Trn Benf: Frontier Insurance Comp Orig: /0120804267		75,000.00
	Total Withdrawals, Transfers and Account Fees		9823,326.03
	Service Charge		
/30	5 Teller Deposit(s) Exceeded The Activity Allowance Of 10		\$10.00

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ly Balance

Date	Amount	Date	Amount	Date	Amount
09/02	\$ 338,619.14	09/14	617,574.48	09/24	60,279.93
09/03	298,619.14	09/15	624,173.36	09/27	106,085.46
09/08	398,147.88	09/16	643,554.76	09/28	104,538.41
09/09	399,674.20	09/17	66,653.76	09/29	155,947.24
09/10	346,946.68	09/28	87,718.42	09/30	130,937.24
09/13	494,238.66	09/21	142,855.93		

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P.09/35



OD SERVICE INSURANCE MANAGERS, INC
 UST ACCOUNT

Statement Period: July 31 through August 31, 1999
 Account Number: 01208-04267

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 count Activity

Date	Description	Reference Number	Amount
8/05	Withdrawals, Transfers and Account Fees Busctrnsf Dwight Halverson Co ID: 1282150000 01208-04267/121000358 ID# 24 Ref:121108254569625		\$20,000.00
8/06	Busctrnsf Dwight Halverson Co ID: 1282150000 01208-04267/121000358 ID# 24 Ref:121108258143600		10,000.00
8/11	Busctrnsf Dwight Halverson Co ID: 1282150000 01208-04267/121000358 ID# 24 Ref:121108254612492		30,794.93
8/11	Busctrnsf Dwight Halverson Co ID: 1282150000 01208-04267/121000358 ID# 22 Ref:121108254612490		40,000.00
8/16	Busctrnsf Dwight Halverson Co ID: 1282150000 01208-04267/121000358 ID# 24 Ref:121108254880809		27,522.07
8/17	Money Transfer-Calif Trn: 990817-031262 Sender Ref: 945542 Src: Br 0426 Benf: Frontier Insurance Co-Concentration Orig: Food Service Insurance Manager		150,000.00
8/17	Money Transfer-Calif Trn: 990817-031420 Sender Ref: 945546 Src: Br 0426 Benf: Frontier Insurance Co-Concentration Orig: Food Service Insurance Manager		
8/24	Busctrnsf Dwight Halverson Co ID: 1282150000 01208-04267/121000358 ID# 24 Ref:121108257646590		20,000.00
8/30	Check Printing Charge (includes Delivery Charges And All Applicable Taxes)		15.10
8/31	Busctrnsf Dwight Halverson Co ID: 1282150000 01208-04267/121000358 ID# 24 Ref:121108252822957		20,000.00
	Total Withdrawals, Transfers and Account Fees		\$1,016,610.02
8/31	Service Charge 12 Teller Deposit(s) Exceeded The Activity Allowance Of 10		\$24.00

8/17 WIRE * 690,277.92 *

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 Daily Balance

Date	Amount	Date	Amount	Date	Amount
08/02	0 141,176.06	08/15	718,783.06	08/25	352,311.47
08/03	151,345.64	08/16	906,502.84	08/26	359,404.75
08/05	131,345.64	08/17	221,355.58	08/27	381,653.26
08/06	439,320.02	08/18	247,278.29	08/30	404,097.69
08/09	501,753.98	08/20	286,876.23	08/31	378,619.14
08/11	481,543.53	08/23	342,703.62		
08/12	668,593.79	08/24	346,055.59		

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 TS - FDIC Insured Account Disclosure Information

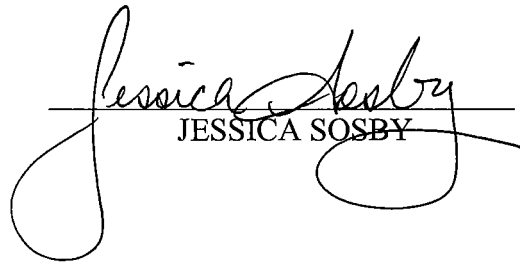
On any day we process withdrawals from your account in a specific order. For example, we process ATM withdrawals, automatic payments and check card purchases before the checks you have written. As of October 1, we will process withdrawals from highest to lowest dollar amount within each category. If there are insufficient funds to cover all the items processed on any given day, this procedure may enable us to pay your larger items, such as your rent or mortgage payment. In some cases, it may result in additional overdraft fees for smaller items. We offer overdraft protection plans that may help you avoid overdrafts.

FIC/FSIM 000818

CERTIFICATE OF SERVICE

I, Jessica Sosby, hereby certify that I am not a party to the action, I am over the age of eighteen years, I am employed by the law firm of Entwistle & Cappucci LLP, attorneys for plaintiff Gregory V. Serio, Superintendent of Insurance of the State of New York, as Rehabilitator of Frontier Insurance Company, and as Assignee of Platinum Indemnity, Ltd., and that on September 27, 2004, I served the foregoing documents in the within action by causing a true and correct copy of (1) Memorandum of Law in Opposition to Defendants' Motion to Dismiss the Complaint and to Compel Mediation and (2) Declaration of Laurie J. Weiss to be sent via first class mail to counsel listed below:

Lorienton N.A. Palmer, Esq.
Schindel, Farman & Lipsius LLP
14 Penn Plaza, Suite 500
New York, New York 10122


JESSICA SOSBY